# 2020

# CUMULATIVE SUPPLEMENT

TO

# MISSISSIPPI CODE

## 1972 ANNOTATED

**Issued December 2020**

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# User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

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# PUBLISHER'S FOREWORD

## Statutes

The 2020 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2020 Regular Legislative Session.

## Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

## Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

## Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

### Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

### Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2020 Regular Session.

### Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

### Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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### § 43-1-1. Department of Human Services to be State Department of Public Welfare [Repealed effective July 1, 2023].

(1) The Department of Human Services shall be the State Department of Public Welfare and shall retain all powers and duties as granted to the State Department of Public Welfare. Wherever the term "State Department of Public Welfare" or "State Board of Public Welfare" appears in any law, the same shall mean the Department of Human Services. The Executive Director of Human Services may assign to the appropriate offices such powers and duties deemed appropriate to carry out the lawful functions of the department.

(2) This section shall stand repealed on July 1, 2023.

**HISTORY: Codes, 1942, § 7217; Laws, 1936, ch. 175; Laws, 1940, ch. 298; Laws, 1986, ch. 500, § 34; Laws, 1989, ch. 544, § 61; Laws, 1990, ch. 522, § 17; Laws, 1992, ch. 585 § 2; reenacted and amended, Laws, 1994 Ex Sess, ch. 22, § 1; Laws, 2001, ch. 599, § 2; Laws, 2002, ch. 573, § 1; reenacted and amended, Laws, 2005, ch. 537, § 1; Laws, 2009, ch. 564, § 1; Laws, 2012, ch. 470, § 1; Laws, 2015, ch. 403, § 1, eff from and after July 1, 2015; Laws, 2019, ch. 372, § 1, eff from and after July 1, 2019.**

**Amendment Notes** — The 2019 amendment extended the date of the repealer for the section by substituting "July 1, 2023" for "July 1, 2019" in (2).

### § 43-1-2. Mississippi Department of Human Services; Executive Director of Human Services; Joint Oversight Committee; powers of executive director; structure of department [Repealed effective July 1, 2023].

(1) There is created the Mississippi Department of Human Services, whose offices shall be located in Jackson, Mississippi, and which shall be under the policy direction of the Governor.

(2) The chief administrative officer of the department shall be the Executive Director of Human Services. The Governor shall appoint the Executive Director of Human Services with the advice and consent of the Senate, and he shall serve at the will and pleasure of the Governor, and until his successor is appointed and qualified. The Executive Director of Human Services shall possess the following qualifications:

(a) A bachelor's degree from an accredited institution of higher learning and ten (10) years' experience in management, public administration, finance or accounting; or

(b) A master's or doctoral degree from an accredited institution of higher learning and five (5) years' experience in management, public administration, finance or accounting.

Those qualifications shall be certified by the State Personnel Board.

(3) There shall be a Joint Oversight Committee of the Department of Human Services composed of the respective Chairmen of the Senate Public Health and Welfare Committee, the Senate Appropriations Committee, the House Public Health and Human Services Committee and the House Appropriations Committee, three (3) members of the Senate appointed by the Lieutenant Governor to serve at the will and pleasure of the Lieutenant Governor, and three (3) members of the House of Representatives appointed by the Speaker of the House to serve at the will and pleasure of the Speaker. The chairmanship of the committee shall alternate for twelve-month periods between the Senate members and the House members, on May 1 of each year, with the Chairman of the Senate Public Health and Welfare Committee serving as chairman beginning in even-numbered years, and the Chairman of the House Public Health and Human Services Committee serving as chairman beginning in odd-numbered years. The committee shall meet once each quarter, or upon the call of the chairman at such times as he deems necessary or advisable, and may make recommendations to the Legislature pertaining to any matter within the jurisdiction of the Mississippi Department of Human Services. The appointing authorities may designate an alternate member from their respective houses to serve when the regular designee is unable to attend such meetings of the oversight committee. For attending meetings of the oversight committee, such legislators shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the committee will be paid while the Legislature is in session. No per diem and expenses will be paid except for attending meetings of the oversight committee without prior approval of the proper committee in their respective houses.

(4) The Department of Human Services shall provide the services authorized by law to every individual determined to be eligible therefor, and in carrying out the purposes of the department, the executive director is authorized:

(a) To formulate the policy of the department regarding human services within the jurisdiction of the department;

(b) To adopt, modify, repeal and promulgate, after due notice and hearing, and where not otherwise prohibited by federal or state law, to make exceptions to and grant exemptions and variances from, and to enforce rules and regulations implementing or effectuating the powers and duties of the department under any and all statutes within the department's jurisdiction, all of which shall be binding upon the county departments of human services;

(c) To apply for, receive and expend any federal or state funds or contributions, gifts, devises, bequests or funds from any other source;

(d) Except as limited by Section 43-1-3, to enter into and execute contracts, grants and cooperative agreements with any federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the programs of the department; and

(e) To discharge such other duties, responsibilities and powers as are necessary to implement the programs of the department.

(5) The executive director shall establish the organizational structure of the Mississippi Department of Human Services which shall include the creation of any units necessary to implement the duties assigned to the department and consistent with specific requirements of law, including, but not limited to:

(a) Office of Family Children's Services;

(b) Office of Youth Services;

(c) Office of Economic Assistance;

(d) Office of Child Support Enforcement; or

(e) Office of Field Operations to administer any state or county level programs under the purview of the Mississippi Department of Human Services, with the exception of programs which fall under paragraphs (a) and (b) above.

(6) The Executive Director of Human Services shall appoint heads of offices, bureaus and divisions, as defined in Section 7-17-11, who shall serve at the pleasure of the executive director. The salary and compensation of such office, bureau and division heads shall be subject to the rules and regulations adopted and promulgated by the State Personnel Board as created under Section 25-9-101 et seq. The executive director shall have the authority to organize offices as deemed appropriate to carry out the responsibilities of the department. The organization charts of the department shall be presented annually with the budget request of the Governor for review by the Legislature.

(7) This section shall stand repealed on July 1, 2023.

**HISTORY: Laws, 1989, ch. 544, § 59; Laws, 1990, ch. 522, § 18; Laws, 1991, ch. 608, § 27; Laws, 1992, ch. 585 § 1; reenacted and amended, Laws, 1994 Ex Sess, ch. 22, § 2; Laws, 1997, ch. 316, § 15; Laws, 2001, ch. 599, § 3; Laws, 2002, ch. 573, § 2; reenacted and amended, Laws, 2005, ch. 537, § 2; Laws, 2009, ch. 564, § 2; Laws, 2012, ch. 470, § 2; Laws, 2015, ch. 403, § 2, eff from and after July 1, 2015; Laws, 2019, ch. 372, § 2, eff from and after July 1, 2019.**

**Editor's Notes** — Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

**Amendment Notes** — The 2019 amendment extended the date of the repealer for the section by substituting "July 1, 2023" for "July 1, 2019" in (7).

## § 43-1-3. Delegation, privatization, or contracting with private entity for operation of office, bureau or division of department prohibited; contracts for improvement of performance or efficiency of services authorized [Repealed effective July 1, 2023].

Notwithstanding the authority granted under subsection (4)(d) of Section 43-1-2, the Department of Human Services or the Executive Director of Human Services shall not be authorized to delegate, privatize or otherwise enter into a contract with a private entity for the operation of any office, bureau or division of the department, as defined in Section 7-17-11, without specific authority to do so by general act of the Legislature. However, nothing in this section shall be construed to invalidate (a) any contract of the department that is in place and operational before January 1, 1994; or (b) the continued renewal of any such contract with the same entity upon the expiration of the contract; or (c) the execution of a contract with another legal entity as a replacement of any such contract that is expiring, provided that the replacement contract is substantially the same as the expiring contract. Nothing in this section shall prohibit the Department of Human Services or the Executive Director of Human Services from entering into any contract with vendors or contractors intended to improve performance, reduce costs or increase efficiency, so long as the contract remains under the supervision or control of an office, bureau or division of the department, and provided that no county office of the department may be closed unless the Legislature specifically authorizes its closure in advance of the closure.

This section shall stand repealed on July 1, 2023.

**HISTORY: Laws, 1994, Ex Sess, ch. 22, § 3; Laws, 2001, ch. 599, § 4; Laws, 2002, ch. 573, § 3; reenacted and amended, Laws, 2005, ch. 537, § 3; Laws, 2009, ch. 564, § 3; Laws, 2012, ch. 470, § 3; Laws, 2013, ch. 515, § 1; Laws, 2015, ch. 403, § 3, eff from and after July 1, 2015; Laws, 2019, ch. 372, § 3, eff from and after July 1, 2019.**

**Amendment Notes —** The 2019 amendment, in the first paragraph, substituted "(a)" for "(i)," "(b)" for "(ii)" and "(c)" for "(iii)"; and extended the date of the repealer for the section by substituting "July 1, 2023" for "July 1, 2019" in the second paragraph.

## § 43-1-4. Powers and duties of department.

The Department of Human Services shall have the following powers and duties:

(a) To provide basic services and assistance statewide to needy and disadvantaged individuals and families.

(b) To promote integration of the many services and programs within its jurisdiction at the client level thus improving the efficiency and effectiveness of service delivery and providing easier access to clients.

(c) To develop a statewide comprehensive service delivery plan in coordination with the Board of Health, the Board of Mental Health, and the

Department of Finance and Administration. Such plan shall be developed and presented to the Governor by January 1, 1990.

(d) To employ personnel and expend funds appropriated to the department to carry out the duties and responsibilities assigned to the department by law.

(e) To fingerprint and conduct a background investigation on every employee, contractor, subcontractor and volunteer (i) who has direct access to clients of the department who are children or vulnerable adults, (ii) who is in a position of fiduciary responsibility, (iii) who is in a position with access to Federal Tax Information (FTI), or (iv) who is otherwise required by federal law or regulations to undergo a background investigation. Every such employee, contractor, subcontractor and volunteer shall provide a valid current social security number and/or driver's license number which shall be furnished to conduct the background investigation for determination as to good moral character and to ensure that no person placed in any position referenced in this paragraph has a felony conviction that would prevent employment or access to Federal Tax Information according to department policy. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded to the Federal Bureau of Investigation for a fingerprint-based national criminal history record check. The department shall be the recipient of the results of any background investigation and/or criminal history record check performed in accordance with this paragraph.

**HISTORY: Laws, 1989, ch. 544, § 60; Laws, 2005, ch. 431, § 1, eff from and after July 1, 2005; Laws, 2018, ch. 420, § 1, eff from and after July 1, 2018.**

**Amendment Notes** — The 2018 amendment, in (e), rewrote the first sentence, which read: "To fingerprint and perform a criminal history record check on every employee or volunteer (i) who has direct access to clients of the department who are children or vulnerable adults, or (ii) who is in a position of fiduciary responsibility," in the second sentence, inserted "contractor, subcontractor" and substituted "background investigation for determination ... Federal Tax Information according to department policy" for "criminal history record check," in the third sentence, inserted "fingerprint-based" and made a minor stylistic change, and added the last sentence.

## § 43-1-5. Duties of department [Repealed effective July 1, 2023].

It shall be the duty of the Department of Human Services to:

(1) Establish and maintain programs not inconsistent with the terms of this chapter and the rules, regulations and policies of the Department of Human Services, and publish the rules and regulations of the department pertaining to such programs.

(2) Make such reports in such form and containing such information as the federal government may, from time to time, require, and comply with such provisions as the federal government may, from time to time, find necessary to assure the correctness and verification of such reports.

(3) Within ninety (90) days after the end of each fiscal year, and at each regular session of the Legislature, make and publish one (1) report to the

Governor and to the Legislature, showing for the period of time covered, in each county and for the state as a whole:

(a) The total number of recipients;

(b) The total amount paid to them in cash;

(c) The maximum and the minimum amount paid to any recipients in any one (1) month;

(d) The total number of applications;

(e) The number granted;

(f) The number denied;

(g) The number cancelled;

(h) The amount expended for administration of the provisions of this chapter;

(i) The amount of money received from the federal government, if any;

(j) The amount of money received from recipients of assistance and from their estates and the disposition of same;

(k) Such other information and recommendations as the Governor may require or the department shall deem advisable;

(*l*) The number of state-owned automobiles purchased and operated during the year by the department, the number purchased and operated out of funds appropriated by the Legislature, the number purchased and operated out of any other public funds, the miles traveled per automobile, the total miles traveled, the average cost per mile and depreciation estimate on each automobile;

(m) The cost per mile and total number of miles traveled by department employees in privately owned automobiles, for which reimbursement is made out of state funds;

(n) Each association, convention or meeting attended by any department employees, the purposes thereof, the names of the employees attending and the total cost to the state of such convention, association or meeting;

(o) How the money appropriated to the institutions under the jurisdiction of the department has been expended during the preceding year, beginning and ending with the fiscal year of each institution, exhibiting the salaries paid to officers and employees of the institutions, and each and every item of receipt and expenditure;

(p) The activities of each office within the Department of Human Services and recommendations for improvement of the services to be performed by each division.

Each report shall be balanced and shall begin with the balance at the end of the preceding fiscal year, and if any property belonging to the state or the institution is used for profit, such report shall show the expenses incurred in managing the property and the amount received from the same. Such reports shall also show a summary of the gross receipts and gross disbursements for each fiscal year and shall show the money on hand at the beginning of the fiscal period of each division and institution of the department.

This section shall stand repealed on July 1, 2023.

**HISTORY: Codes, 1942, § 7219; Laws, 1936, ch. 175; Laws, 1940, ch. 298; Laws, 1946, ch. 331, § 1; Laws, 1950, ch. 527; Laws, 1952, ch. 388, § 1; Laws, 1954, ch. 355, § 1; Laws, 1958, ch. 349; Laws, 1966, ch. 445, § 21; Laws, 1983, ch. 504, § 2; Laws, 1989, ch. 544, § 63; Laws, 1990, ch. 522, § 19; Laws, 1991, ch. 434, § 1; Laws, 1992, ch. 585, § 3; Laws, 1992, ch. 523, § 1; reenacted and amended, Laws, 1994 Ex Sess, ch. 22, § 4; Laws, 2001, ch. 599, § 5; Laws, 2002, ch. 573, § 4; reenacted and amended, Laws, 2005, ch. 537, § 4; Laws, 2009, ch. 564, § 4; Laws, 2012, ch. 470, § 4; Laws, 2015, ch. 403, § 4, eff from and after July 1, 2015; Laws, 2019, ch. 372, § 4, eff from and after July 1, 2019.**

**Amendment Notes** — The 2019 amendment extended the date of the repealer for the section by substituting "July 1, 2023" for "July 1, 2019" in the last paragraph.

## § 43-1-30. Mississippi TANF Implementation Council [Repealed effective July 1, 2023].

**HISTORY: Laws, 1993, ch. 614, § 13; Laws, 1997, ch. 316, § 20; Laws, 2004, ch. 572, § 48; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 48; reenacted without change, Laws, 2010, ch. 559, § 48; reenacted without change, Laws, 2011, ch. 471, § 49; reenacted without change, Laws, 2012, ch. 515, § 49; Laws, 2014, ch. 397, § 58, eff from and after July 1, 2014; reenacted without change, Laws, 2019, ch. 451, § 48, eff from and after passage (approved April 3, 2019).**

**Editor's Notes** — This section was reenacted without change by Laws of 2019, ch. 451, § 48, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, and as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

**Amendment Notes** — The 2019 amendment, effective April 3, 2019, reenacted the section without change.

## DIVISION OF FAMILY AND CHILDREN'S SERVICES

| Sec. | |
|---|---|
| 43-1-55. | Repealed. |

## § 43-1-51. Creation of division; areas of responsibility.

**Editor's Notes** — Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

## § 43-1-55. Repealed.

Repealed by its own terms, effective July 1, 2019.

§ 43-1-55. [Laws, 1986, ch. 500, § 38; Laws, 2004, ch. 489, § 1; Laws, 2006, ch. 589, § 2; Laws, 2006, ch. 600, § 1; Laws, 2009, ch. 364, § 1; Laws, 2010, ch. 461, § 1; Laws, 2012, ch. 470, § 6; Laws, 2015, ch. 403, § 5, eff from and after July 1, 2015.]

**Editor's Notes** — Former § 43-1-55 provided standards for employment as a family protection worker and as a family protection specialist and created the Training and Testing Advisory Council.

### § 43-1-57. Recordkeeping procedures; uniform intake procedure.

**Editor's Notes** — Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

### § 43-1-63. Interdepartmental sharing of resources and services for preventing and detecting child abuse and neglect.

**Editor's Notes** — Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

## CHAPTER 5.

## SCHOOLS FOR THE BLIND AND DEAF

In General. ........................................ 43-5-1

### IN GENERAL

Sec.
43-5-1. State Board of Education to be Board of Trustees of Mississippi School for the Deaf and Mississippi School for the Blind; no consolidation of schools required.
43-5-8. Superintendents of Schools for Blind and Deaf; appointment; powers and duties; budget responsibilities; administrative and licensed instructional staff contracts of employment; competitive appointment of other personnel.
43-5-13. Braille and lip-reading to be taught.

### § 43-5-1. State Board of Education to be Board of Trustees of Mississippi School for the Deaf and Mississippi School for the Blind; no consolidation of schools required.

(1) The State Board of Education shall be the Board of Trustees of the Mississippi School for the Deaf and the Mississippi School for the Blind and shall retain all powers and duties granted by law to the Board of Trustees of the Mississippi School for the Deaf and the Mississippi School for the Blind. Wherever the term Board of Trustees of the Mississippi School for the Deaf and Mississippi School for the Blind appears in any law the same shall mean the State Board of Education.

(2) The provisions of this section shall not be construed to require any consolidation or combination of the Mississippi School for the Deaf and the Mississippi School for the Blind other than where economies can be realized through the common utilization of maintenance personnel and equipment, physical facilities, vehicles and administrative personnel, where the same can be done without impairment of the effectiveness of the educational programs of the two (2) institutions or the welfare of the students.

(3) The provisions of this section shall not be construed to require any consolidation of services involving curriculum or instructional programs of the two (2) institutions.

(4) The State Board of Education, on behalf of each of these institutions, shall have the power to receive and hold property, real and personal, and to accept and use as provided by law, separate from the needs of the other institutions, all bequests, devices and donations made or which may in the future be made to or for it, and shall continue to enjoy the rights and privileges heretofore conferred upon it by law and such as are necessary now, or hereafter, to accomplish the purposes of its own establishment and operation and maintenance hereunder, provided that the same be not inconsistent with or in conflict with this chapter. The State Board of Education, in its discretion, may delegate any such powers and duties, as it deems appropriate, to any administrative staff of the State Department of Education, the Mississippi School for the Deaf or the Mississippi School for the Blind.

**HISTORY: Codes, Hutchinson's 1848, ch. 9, art. 43; 1857, ch. 13, art. 2, ch. 14, art. 2; 1871, §§ 2104, 2112; 1880, §§ 669, 678; 1892, §§ 2310, 2320, 2321; 1906, §§ 2539, 2548, 2549; Hemingway's 1917, §§ 4993, 5008, 5009; 1930, §§ 7295, 7304, 7305; 1942, § 6785; Laws, 1924, ch. 309; Laws, 1924, ch. 310; Laws, 1944, ch. 163, § 1; Laws, 1989, ch. 544, § 142; Laws, 1991, ch. 534, § 15, eff from and after July 1, 1991; Laws, 2020, ch. 369, § 1, eff from and after July 1, 2020.**

**Amendment Notes** — The 2020 amendment, in (4), added the last sentence.

### § 43-5-8. Superintendents of Schools for Blind and Deaf; appointment; powers and duties; budget responsibilities; administrative and licensed instructional staff contracts of employment; competitive appointment of other personnel.

(1) The Superintendent of the School for the Blind and the Superintendent of the School for the Deaf shall be selected by and hold office subject to the will and pleasure of the State Superintendent of Public Education, subject to the approval of the State Board of Education. The State Board of Education may provide housing for the two (2) superintendents so employed either on- or off-campus. Each superintendent shall at all times maintain supervision of the physical properties of the school he serves.

(2) Effective July 1, 2021, all other administrative and licensed instructional staff employed at the Mississippi School for the Blind and the Mississippi School for the Deaf, hereinafter MSBD, shall enter into written contracts of employment to indicate and cover the period for which they are respectively employed. Such employees shall be transferred from state service under the authority of the State Personnel Board to employment status as employees of the respective school. The State Board of Education may set and determine qualifications necessary for such employees and may appoint a subcommittee of the board for the purpose of authorizing the execution of such employment contracts on a timely basis. All such contracts and employment rights prescribed thereunder shall be awarded and governed in accordance with Section 37-9-1, et seq., as applicable, and Section 37-7-307. Said contracts shall be exempt from any applicable requirements of the Public Procurement Review Board for state agency employment contracts. All references within Section 37-9-1 et seq. to a "local school district" shall apply to MSBD, and all references to a "local school board" shall apply to the State Board of Education in its role as board of trustees pursuant to Sections 43-5-1 and 43-5-5. There shall be no interruption of service with the Public Employees' Retirement System and the State and School Employees' Health Insurance Plan for administrative and licensed instructional staff. Any unused leave accumulated in state-service employment shall be transferred in accordance with the provisions of Section 37-7-707, unless otherwise provided.

(3) Effective July 1, 2021, all other personnel shall be competitively appointed by the State Superintendent of Public Education with the recommendation of the superintendent of the respective school. There shall be no interruption of service with the Public Employees' Retirement System and the State and School Employees' Health Insurance Plan for those applicable personnel. The employment shall be subject to the will and pleasure of the superintendent of the respective school, and shall not be subject to the rules and regulations of the State Personnel Board, except as provided in Section 25-9-127(4). The State Superintendent of Public Education shall fix the amount of compensation or expenses of these personnel, which shall be paid upon the requisition of the State Superintendent of Public Education and

warrant issued thereunder by the State Auditor out of the funds appropriated by the Legislature in a lump sum upon the basis of budgetary requirements submitted by the State Superintendent of Public Education or out of funds otherwise made available.

(4) The entire expense of administering the schools shall never exceed the amount appropriated therefor, plus funds received from sources other than state appropriations. For a violation of this provision, the superintendent shall be liable, and he or she and the sureties on his or herbond shall be required to restore any excess. Effective July 1, 2021, any and all employees or personnel of MSBD, whether administrative, licensed instructional, nonlicensed instructional or otherwise, paid using funds appropriated therefor or received from sources other than appropriations, shall be stationed at the respective campus of MSBD for the benefit of the respective school.

**HISTORY: Laws, 1989, ch. 544, § 149; Laws, 1992, ch. 338, § 2; Laws, 1993, ch. 602, § 14; Laws, 1995, ch. 448, § 1; Laws, 2014, ch. 491, § 7, eff from and after passage (approved Apr. 15, 2014.); Laws, 2020, ch. 369, § 2, eff from and after July 1, 2020.**

**Amendment Notes —** The 2020 amendment rewrote the section, which read: "The Superintendent of the School for the Blind and the Superintendent of the School for the Deaf and all principals and directors shall be selected by and hold office subject to the will and pleasure of the State Superintendent of Education, subject to the approval of the State Board of Education. The State Board of Education may provide housing for the two (2) superintendents so employed either on- or off-campus. Each superintendent shall at all times maintain supervision of the physical properties of the school he serves unless otherwise provided. All other personnel shall be competitively appointed by the state superintendent and shall be dismissed only for cause in accordance with the rules and regulations of the State Personnel Board. The state superintendent, subject to the approval of the State Personnel Board, shall fix the amount of compensation or expenses of any of the personnel of the schools, which shall be paid upon the requisition of the state superintendent and warrant issued thereunder by the State Auditor out of the funds appropriated by the Legislature in a lump sum upon the basis of budgetary requirements submitted by the Superintendent of Education or out of funds otherwise made available. The entire expense of administering the schools shall never exceed the amount appropriated therefor, plus funds received from sources other than state appropriations. For a violation of this provision, the superintendent shall be liable, and he and the sureties on his bond shall be required to restore any excess. However, if for any reason within the two-year period beginning July 1, 2014, a new Superintendent of the School for the Blind, Superintendent of the School for the Deaf or other administrative or instructional personnel are employed by the department, the employment shall not be subject to the rules and regulations of the State Personnel Board, except as otherwise provided in Section 25-9-127(4)."

## § 43-5-13. Braille and lip-reading to be taught.

Braille print, designated commonly as revised Braille Grade Two, shall be taught in the School for the Blind. The use of this print shall be included in the high school literary courses of students in such school. Every teacher or instructor in the School for the Deaf, whose duties include oral instruction of pupils, shall become acquainted with the most efficient and advanced methods of lipreading, but every teacher shall also master the manual alphabet in order to be able to communicate with pupils who cannot read lips and in order to aid and participate in student activities outside the classrooms. Every pupil entering the school shall be given oral instruction until it is clearly determined whether he can master lipreading to an extent enabling him to progress satisfactorily in his studies, but manual instruction shall be provided in all subjects for all pupils unable to progress satisfactorily under oral instruction alone. The State Board of Education may set and determine the additional requirements necessary for each teacher or instructor. Complete courses in shorthand and typewriting are to be offered at the School for the Deaf.

**HISTORY: Codes, 1942, § 6785-05; Laws, 1944, ch. 163, § 6; Laws, 1990, ch. 535, § 15, eff from and after July 1, 1990; Laws, 2020, ch. 369, § 3, eff from and after July 1, 2020.**

The 2020 amendment deleted the former next-to-last sentence, which read: “All teachers and instructors must enter into written contracts of employment to indicate and cover the period for which they are respectively employed.”

# CHAPTER 6.

# RIGHTS AND LIABILITIES OF PERSONS WITH DISABILITIES

Article 1. General Provisions. .............................................. 43-6-1
Article 5. Mississippi Support Animal Act. ............................. 43-6-151

## ARTICLE 1.

## GENERAL PROVISIONS.

### § 43-6-1. Definitions.

**HISTORY: Codes, 1942, § 7158-25; Laws, 1972, ch. 451, § 5; Laws, 1978, ch. 402, § 1, eff from and after passage (approved March 23, 1978); brought forward without change, Laws, 2018, ch. 341, § 4, eff from and after July 1, 2018.**

**Editor’s Notes —** This section was brought forward without change by Laws of 2018, ch. 341, § 4, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

**Amendment Notes —** The 2018 amendment brought the section forward without change.

### § 43-6-3. Right to use public facilities.

**HISTORY: Codes, 1942, § 7158-21; Laws, 1972, ch. 451, § 1; Laws, 1978, ch. 402, § 2, eff from and after passage (approved March 23, 1978); brought forward without change, Laws, 2018, ch. 341, § 5, eff from and after July 1, 2018.**

**Editor’s Notes —** This section was brought forward without change by Laws of 2018, ch. 341, § 5, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

**Amendment Notes —** The 2018 amendment brought the section forward without change.

## § 43-6-5. Right of access to public conveyances and accommodations.

**HISTORY: Codes, 1942, § 7158-22; Laws, 1972, ch. 451, § 2; Laws, 1978, ch. 402, § 3, eff from and after passage (approved March 23, 1978); brought forward without change, Laws, 2018, ch. 341, § 6, eff from and after July 1, 2018.**

**Editor's Notes —** This section was brought forward without change by Laws of 2018, ch. 341, § 6, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

**Amendment Notes —** The 2018 amendment brought the section forward without change.

## § 43-6-7. Right to be accompanied by guide dog or hearing ear dog.

**HISTORY: Codes, 1942, § 7158-23; Laws, 1972, ch. 451, § 3; Laws, 1978, ch. 402, § 4, eff from and after passage (approved March 23, 1978); brought forward without change, Laws, 2018, ch. 341, § 7, eff from and after July 1, 2018.**

**Editor's Notes —** This section was brought forward without change by Laws of 2018, ch. 341, § 7, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

**Amendment Notes —** The 2018 amendment brought the section forward without change.

## § 43-6-9. Blind and deaf pedestrians.

**HISTORY: Codes, 1942, § 7158-24; Laws, 1972, ch. 451, § 4; Laws, 1978, ch. 402, § 5, eff from and after passage (approved March 23, 1978); brought forward without change, Laws, 2018, ch. 341, § 8, eff from and after July 1, 2018.**

**Editor's Notes —** This section was brought forward without change by Laws of 2018, ch. 341, § 8, effective from and after July 1, 2018. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

**Amendment Notes —** The 2018 amendment brought the section forward without change.

# ARTICLE 5.

# MISSISSIPPI SUPPORT ANIMAL ACT.

Sec.
43-6-153. Definitions.
43-6-155. Support animals' access to public places; limitations.

## § 43-6-153. Definitions.

The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Mobility impaired person" means any person, regardless of age, who is subject to a physiological defect or deficiency regardless of its cause, nature, or extent that renders the person unable to move about without the aid of crutches, a wheelchair or any other form of support, or that limits the person's functional ability to ambulate, climb, descend, sit, rise, or to perform any related function.

(b) "Blind" means either of the following:

(i) Vision 20/200 or less in the better eye with proper correction.

(ii) Field defect in the better eye with proper correction which contracts the peripheral field so that the diameter of the visual field subtends an angle no greater than twenty (20) degrees.

(c) "Traumatic event" means a life-threatening event such as military combat, natural disaster, terrorist incident, serious accident or violent personal assault of a physical or sexual nature that occurred while an individual was on active duty or deployment as a member of the United States Armed Services.

(d) "Post traumatic stress disorder" or PTSD means an anxiety disorder that occurs following the experience of a frightening, distressing or traumatic event or from witnessing a traumatic event. PTSD is also referred to as "post traumatic stress syndrome" or PTSS.

(e) "Support animal" means an animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability. The work done or task performed must be directly related to the individual's disability and may include, but not be limited to:

(i) Guiding individuals who are visually impaired or blind;

(ii) Alerting individuals who are hearing impaired or deaf to an intruder or sounds;

(iii) Providing minimal protection or rescue work;

(iv) Pulling a wheelchair;

(v) Fetching dropped items;

(vi) Detecting the onset of a seizure, and alerting and protecting individuals having a seizure;

(vii) Retrieving objects;

(viii) Alerting an individual to the presence of allergens;

(ix) Providing physical support and assistance with balance and stability to an individual with a mobility disability;

(x) Helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors;

(xi) Reminding an individual with mental illness to take prescribed medication;

(xii) Calming an individual with post traumatic stress disorder during an anxiety attack; or

(xiii) Doing other specific work or performing other special tasks.

The term "support animal" includes service animals, guide animals, seeing-eye animals, hearing-ear animals, therapeutic animals, comfort animals and facility animals. However, the term "support animal" does not mean an animal considered a pet, and is limited to a dog or miniature horse.

(f) "Support animal trainer" means a person who trains or raises support animals for individuals with disabilities, whether the person is a professional trainer, or serving as a volunteer with a professional trainer.

**HISTORY: Laws, 1989, ch. 386, § 2, eff from and after July 1, 1989; Laws, 2018, ch. 341, § 1, eff from and after July 1, 2018.**

**Amendment Notes** — The 2018 amendment added (c) through (f).

## § 43-6-155. Support animals' access to public places; limitations.

(1) Any blind person, mobility impaired person, armed services veteran diagnosed with PTSD or hearing impaired person who uses a support animal specifically trained as a guide, leader, listener or for any other necessary assistance in day-to-day activities shall be entitled to the full and equal accommodations, advantages, facilities and privileges of all public conveyances, hotels, lodging places, businesses open to the public for the sale of any goods or services and all places of public accommodation, amusement, or resort and other places to which the general public is invited, and may take the support animal into conveyances and places, subject only to the conditions and limitations applicable to all persons not so accompanied, except that:

(a) The support animal shall not occupy a seat in any public conveyance.

(b) The support animal shall be upon a leash or otherwise sufficiently restrained in a manner appropriate for the animal while using the facilities of a common carrier.

(2) Support animal trainers shall have the same rights of accommodations, advantages, facilities and privileges with support animals-in-training as those provided to blind persons, mobility impaired persons, hearing impaired persons or veterans diagnosed with PTSD with support animals under this section.

(3) No person shall deprive a blind person, mobility impaired person, hearing impaired person, veteran diagnosed with PTSD or a support animal trainer of any of the advantages, facilities or privileges provided in this section, nor charge such blind person, mobility impaired person, hearing impaired person, veteran diagnosed with PTSD or support animal trainer a fee or charge for the use of the animal.

**HISTORY: Laws, 1989, ch. 386, § 3; Laws, 1999, ch. 478, § 1; Laws, 2000, ch. 523, § 2, eff from and after July 1, 2000; Laws, 2018, ch. 341, § 2, eff from and after July 1, 2018.**

**Amendment Notes** — The 2018 amendment, substituted "support animal" for "dog or other animal" everywhere it appears in (1), (1)(a) and (1)(b); in the introductory paragraph of (1), inserted "armed services veteran diagnosed with PTSD," and substituted "other necessary assistance in day-to-day" for "other assistance necessary to assist such blind, mobility impaired or hearing impaired person in day-to-day"; in (2), substituted "Support animal trainers shall" for "Trainers of support dogs and other support animals shall," inserted "persons" following "blind" and "mobility impaired" and made a related change, and inserted "or veterans diagnosed with PTSD"; in (3), inserted "person" following "blind" and "mobility impaired" twice and inserted "veteran diagnosed with PTSD" twice.

# CHAPTER 7.

# COUNCIL ON AGING

In General. .................................................. 43-7-1
Long-Term Care Facilities Ombudsman Act. ................................ 43-7-51

## IN GENERAL

Sec.
43-7-7. Duties of Department of Human Services.

### § 43-7-7. Duties of Department of Human Services.

The Department of Human Services shall be responsible for the collection of data and statistics and for making a continuing study of conditions affecting the general welfare of the aging population; for providing for an inter-agency and inter-departmental exchange of ideas; for encouraging and assisting in the development of programs for the aging in municipalities and counties of the state, including elder rights leadership; for cooperation with public and private agencies and departments in coordinating programs for the aging; for encouraging and promoting biological, physiological and sociological research; for making recommendations for residential housing and needed nursing and custodial care facilities.

**HISTORY: Codes, 1942, § 8960-04; Laws, 1964, ch. 441, § 4; Laws, 1989, ch. 544, § 105; Laws, 2017, ch. 344, § 1, eff from and after July 1, 2017.**

**Amendment Notes** — The 2017 amendment inserted "including elder rights leadership" near the middle of the section.

## LONG-TERM CARE FACILITIES OMBUDSMAN ACT

Sec.
43-7-53. Office of State Long-term Care Facilities Ombudsman.
43-7-55. Definitions.
43-7-57. Duties of office.
43-7-59. Certification of community Long-term Care Facilities Ombudsman programs.
43-7-61. Community Long-term Care Facilities Ombudsmen training and certification program; community advisory committee; ombudsman identification card.

Sec.
43-7-63. Duties of community ombudsman.
43-7-65. Investigations by ombudsman; referral of complaints to appropriate agencies.
43-7-67. Access to long-term care facilities by ombudsman.
43-7-69. Confidentiality of records; policies and procedures.
43-7-77. Additional powers and duties of ombudsmen; agencies to cooperate.
43-7-79. Recommendations, rules and regulations by State Ombudsman.

### § 43-7-53. Office of State Long-term Care Facilities Ombudsman.

(1) There is created by the Mississippi Council on Aging within the Division of Aging and Adult Services the independent organizational unit called the Office of the State Long-Term Care Facilities Ombudsman as provided by the Older Americans Act of 1965, as amended, 42 USCS 3001, which is headed by a State Ombudsman.

(2) The council shall establish the qualifications of the state representatives of the Office of the State Long-Term Care Facilities Ombudsman.

(3) There shall be a position of legal assistance developer within the council who is a member in good standing with The Mississippi Bar who will assist the State Ombudsman in carrying out the duties to protect the health, safety, rights and welfare of residents and provide adequate administrative and legal representation on behalf of residents of Long-Term care facilities in a manner free of conflict of interest.

**HISTORY: Laws, 1988, ch. 592, § 2; Laws, 2017, ch. 344, § 2, eff from and after July 1, 2017.**

**Amendment Notes** — The 2017 amendment rewrote (1), which read: "There is hereby established within the Mississippi Council on Aging, the Office of the State Long-term Care Facilities Ombudsman as provided by the Older Americans Act of 1965, as amended, 42 U.S.C.S. 3001"; rewrote (2), which read: "The council shall establish the qualifications of state and community ombudsmen"; and added (3).

### § 43-7-55. Definitions.

For the purposes of Sections 43-7-51 through 43-7-79, the following words shall have the definitions ascribed herein:

(a) "Administrator" means any person charged with the general administration or supervision of a long-term care facility without regard to whether such person has an ownership interest in such facility or to whether such person's functions and duties are shared with one or more other persons;

(b) "Representatives of the Office of the State Long-Term Care Facilities Ombudsman" means the district or local employees or volunteers selected by an area agency on aging who are then trained and designated as such by the State Ombudsman under Section 43-7-59;

(c) "Council" means the Mississippi Council on Aging;

(d) "Long-term care facility" means any skilled nursing facility, extended care home, intermediate care facility, personal care home or boarding home which is subject to regulation or licensure by the State Department of Health;

(e) "Resident" means any resident, prospective resident, prior resident or deceased resident of any long-term care facility;

(f) "Sponsor" means an adult relative, friend or guardian who has a responsibility in the resident's welfare;

(g) "State Ombudsman" means the State Long-Term Care Facilities Ombudsman;

(h) "State Ombudsman Program" means the program that carries out the duties and functions of the Office of the State Long-Term Care Facilities Ombudsman, which consists of the State Ombudsman, the Office of the State Long-Term Care Facilities Ombudsman and the representatives of the Office of the State Long-Term Care Facilities Ombudsman;

(i) "Area agency on aging" means those grantees of the council which are charged with the local administration of the Older Americans Act.

**HISTORY: Laws, 1988, ch. 592, § 3; Laws, 2017, ch. 344, § 3, eff from and after July 1, 2017.**

**Amendment Notes —** The 2017 amendment rewrote (b), which read: "'Community ombudsman' means a person selected by an area agency on aging who is then trained and certified as such by the council pursuant to Section 43-7-59"; and rewrote (h), which read: "'Ombudsman' means the State Ombudsman or any community ombudsman."

## § 43-7-57. Duties of office.

The duties of the Office of the State Long-Term Care Facilities Ombudsman, as created under Section 43-7-53, shall be:

(a) The establishment of a procedure to have regular and timely access to the services provided by the State Ombudsman Program and to receive, investigate and resolve complaints filed by residents or sponsors or organizations or long-term care facilities on behalf of residents of long-term care facilities relating to the health, safety, welfare and rights of such residents and to represent the interests of residents before governmental agencies;

(b) The monitoring of the development and implementation of federal, state and local laws, regulations and policies with respect to long-term care facilities and to analyze, comment on and recommend any changes in such laws, regulations and policies as the Office of the State Long-Term Care Facilities Ombudsman deems appropriate;

(c) The establishment of a training program for both the state and community ombudsmen;

(d) To provide public forums, including the holding of public hearings, sponsorships of conferences and workshops, and the holding of other meetings to seek information concerning the needs and problems of residents in long-term care facilities;

(e) The establishment and maintenance of a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems faced by residents as a group;

(f) The submission of an annual report to the State Department of Health, the United States Assistant Secretary for Aging (ACL/AOA), Executive Director of the Council and the State Legislature, which shall include statistical information about the state and community long-term care facilities ombudsman programs, shall identify systemic problems in long-term care facilities that cannot be adequately addressed by state and local agencies, and shall include recommendations for legislative or executive action to alleviate any systemic problems;

(g) The testing and designation of the representatives of the Office of the State Long-Term Care Facilities Ombudsman;

(h) The development of an ongoing program of publicizing programs designated by the Office of the State Long-Term Care Facilities Ombudsman and by the community long-term care facilities ombudsman through contact with the media and civic organizations;

(i) The development of policies and regulations related to the use of volunteers in the program; and

(j) Other duties as mandated by the Older Americans Act of 1965, as amended.

**HISTORY: Laws, 1988, ch. 592, § 4; Laws, 2017, ch. 344, § 4, eff from and after July 1, 2017.**

**Amendment Notes —** The 2017 amendment, in (a), inserted "have regular and timely access to the services provided by the State Ombudsman Program and to" near the beginning and added "and to represent…governmental agencies" at the end; added "and to analyze…deems appropriate" at the end of (b); inserted "the United States…and the State Legislature" in (f); rewrote (g), which read: "The testing and certification of ombudsmen"; and deleted "and to assure that the responsibility and authority of volunteers shall be restricted to activities which do not involve access to patient or facility records" from the end of (i).

## § 43-7-59. Certification of community Long-term Care Facilities Ombudsman programs.

(1) The Office of the State Long-Term Care Facilities Ombudsman shall designate and refuse, suspend or remove designation of representatives of the Office of the State Long-Term Care Facilities Ombudsman in particular where a conflict of interest cannot be resolved, except that community long-term care facilities ombudsman programs existing on July 1, 1988, shall be designated unless the Office of the State Long-Term Care Facilities Ombudsman determines that the existing community program no longer meets the requirement of Sections 43-7-51 through 43-7-79.

(2) The State Ombudsman shall specify standards for the designation and operation of community ombudsman programs and establish a grievance process.

**HISTORY: Laws, 1988, ch. 592, § 5; Laws, 2017, ch. 344, § 5, eff from and after July 1, 2017.**

**Amendment Notes** — The 2017 amendment, in (1), substituted "shall designate and refuse, suspend or remove designation of representatives of the Office of the State Long-Term Care Facilities Ombudsman in particular where a conflict of interest cannot be resolved" for "shall certify community long-term care facilities ombudsman programs" and "shall be designated" for "shall be certified"; and rewrote (2), which read: "The council shall specify standards for the certification and operation of community ombudsman programs."

## § 43-7-61. Community Long-term Care Facilities Ombudsmen training and certification program; community advisory committee; ombudsman identification card.

(1) The Office of the State Long-Term Care Facilities Ombudsman shall establish a training and certification program. The State Ombudsman shall specify by rule the content of the training program. Each long-term care facilities ombudsman program shall bear the cost of training its own employees.

(2) The State Ombudsman shall establish minimum qualifications and recertification requirements for representatives of the Office of the State Long-Term Care Facilities Ombudsman. Such training shall include instruction in at least the following subjects as they relate to long-term care:

(a) The responsibilities and duties of community ombudsmen;

(b) The laws and regulations governing the receipt, investigation and resolution of issues of the well-being of a resident;

(c) The role of local, state and federal agencies that regulate long-term care facilities;

(d) The different kinds of long-term care facilities in Mississippi and the services provided in each kind;

(e) The special needs of the elderly and of the physically and mentally handicapped;

(f) The role of the family, the sponsor, the legal representative, the physician, the church, and other public and private agencies, and the community;

(g) How to work with long-term care facility staff;

(h) The aging process and characteristics of the long-term care facility resident or institutionalized elderly;

(i) Familiarity with and access to information concerning the laws and regulations governing Medicare, Medicaid, Social Security, Supplemental Security Income, the Veterans Administration and Workers' Compensation; and

(j) The training program shall include an appropriate internship to be performed in a long-term care facility.

(3) Persons selected by area agencies on aging who have satisfactorily completed the training arranged by the State Ombudsman shall be designated as representatives of the Office of the State Long-Term Care Facilities Ombudsman by the State Ombudsman.

(4) Each area agency on aging may appoint an advisory committee to advise it in the operation of its community ombudsman program. The number

and qualifications of members of the advisory committee shall be determined by the area agency on aging.

(5) Ombudsmen who have successfully completed the training and certification program under this section shall be given identification cards which shall be presented to employees of a long-term care facility upon request.

**HISTORY: Laws, 1988, ch. 592, § 6; Laws, 2017, ch. 344, § 6, eff from and after July 1, 2017.**

**Amendment Notes —** The 2017 amendment substituted "State Ombudsman" for "council" in the second sentence of (1); rewrote the first sentence of (2), which read: "The State Ombudsman shall arrange for the training of all prospective community ombudsmen selected by area agencies on aging"; and substituted "shall be designated as representatives of the Office of the State Long-Term Care Facilities Ombudsman by the State Ombudsman" for "shall be certified as community ombudsmen by the council" in (3).

## § 43-7-63. Duties of community ombudsman.

The duties of the community ombudsman shall be:

(a) The investigation of complaints filed by residents, sponsors, organizations or long-term care facilities on behalf of residents of long-term care facilities relating to the health, safety, welfare and rights of a resident and to ensure that residents have regular and timely access to the services of the State Ombudsman Program without inappropriate disclosure of resident-identifying information.

(b) The pursuit of efforts to resolve complaints informally and represent residents before governmental agencies.

(c) The reviewing of the development and implementation of federal, state and local laws, regulations and policies relating to long-term care and, if appropriate, to comment on those laws, regulations and policies.

(d) The training of volunteers:

(i) Training of volunteers shall be approved by the State Long-Term Care Facilities Ombudsman as appropriate to the level of responsibility of the volunteer, and shall be carried out in accordance with the training manual developed by the Office of the State Long-Term Care Facilities Ombudsman;

(ii) Volunteers who have met the training and designation requirements appropriate to their level of responsibility shall be given identification cards which shall be presented to employees of a long-term care facility upon request;

(iii) No volunteer shall perform any of the duties enumerated by Sections 43-7-51 through 43-7-79 prior to completion of the training and designation program, except as a supervised portion of that training program.

(e) The providing of public forums, scheduling of public hearings, sponsoring of conferences and workshops, and conducting other meetings to gather, disseminate and discuss information relative to the needs and problems of the residents in long-term care facilities as requested by resident and family councils.

(f) The encouragement and assistance in the development and operation of referral services which can provide current, valid and reliable information on long-term care facilities and alternatives to institutionalization for persons in need of these services.

(g) The submission of reports as required by the Office of the State Long-Term Care Facilities Ombudsman.

(h) The development of an ongoing program of publicity concerning the purposes and mode of operation of the long-term care facilities ombudsman program through contact with the media and civic organizations.

**HISTORY: Laws, 1988, ch. 592, § 7; Laws, 2017, ch. 344, § 7, eff from and after July 1, 2017.**

**Amendment Notes —** The 2017 amendment added "and to ensure that residents have regular and timely access to the services of the State Ombudsman Program without inappropriate disclosure of resident-identifying information" at the end of (a); added "and represent residents before governmental agencies" in (b); in (c), substituted "reviewing" for "monitoring" and added "and, if appropriate, to comment on those laws, regulations and policies"; in (d), substituted "designation" for "certification" in (ii), and inserted "and designation" in (iii); and added "as requested by resident and family councils" at the end of (e).

## § 43-7-65. Investigations by ombudsman; referral of complaints to appropriate agencies.

(1) Investigative activities of the ombudsman shall include, but not be limited to: information gathering, mediation, negotiation, informing concerned parties of alternative remedies, reporting of suspected violations to appropriate licensing or certifying agencies and reporting of suspected criminal violations to the appropriate law enforcement authorities. The State Ombudsman Program is excluded from the abuse reporting requirements in Sections 43-47-7 and 43-47-37 without appropriate resident informed consent or a court order.

(2) The ombudsman need not investigate any complaint upon determining that:

(a) The complaint is trivial, frivolous, vexatious, delayed or made in bad faith;

(b) The resources available, considering the established priorities, are insufficient for an adequate investigation;

(c) The matter complained of is not within the investigatory authority of the community long-term care facilities ombudsman program; or

(d) A real or apparent conflict of interest exists and no other ombudsman is available to investigate the complaint in an impartial manner.

(3) If a determination is made by a community long-term care facilities ombudsman not to investigate any complaint, then the complaint shall be referred to the Office of the State Long-Term Care Facilities Ombudsman

which shall make a final decision as to whether the matter warrants further investigation.

(4) The ombudsman shall have access to any long-term care facility or any and all residents of such a facility for the purposes of an investigation under this section or for the purpose of carrying out other duties specified by Sections 43-7-51 through 43-7-79. The ombudsman may enter the facility at a time appropriate to the complaint. The visit may be announced in advance or such visit regarding the complaint under investigation may be unannounced. The clinical record of a resident may be examined by a representative of the State Ombudsman, with the permission of the resident or the resident's legal representative. Any copy of the clinical record examined under this provision shall not be removed from the nursing facility unless written authorization is obtained from the patient or the patient's legal representative.

(5)(a) The State Long-Term Care Facilities Ombudsman shall develop referral procedures that will adhere to the disclosure requirements of the State Ombudsman Program for all long-term care facilities programs to refer any complaint to any appropriate state or local government agency. The agency shall act as quickly as possible on any complaint referred to it by a long-term care facilities ombudsman.

(b) If the complaint is referred to a government agency by a long-term care facilities ombudsman, that ombudsman shall be kept advised and shall be notified in writing in a timely manner by the government agency of the disposition of the referred complaint.

**HISTORY: Laws, 1988, ch. 592, § 8; Laws, 1990, ch. 492, § 1; Laws, 2017, ch. 344, § 8, eff from and after July 1, 2017.**

**Amendment Notes** — The 2017 amendment added the last sentence of (1); inserted "or any and all residents of such a facility" in the first sentence of (4); and inserted "that will adhere to the disclosure requirements of the State Ombudsman Program" in (5)(a).

## § 43-7-67. Access to long-term care facilities by ombudsman.

(1) Except during the course of an investigation carried out under Section 43-7-65, ombudsmen shall have access to long-term care facilities for the purposes of carrying out the duties enumerated by Sections 43-7-51 through 43-7-79 during reasonable hours or at other times with the prior approval of the administrator of the long-term care facility. Access shall mean:

(a) Access to the long-term care facility;

(b) Private communication with residents and their sponsors; and

(c) The right to tour the long-term care facility unescorted.

(2) No person shall discriminate, retaliate or engage in willful interference against any resident, immediate family, resident representative or an employee of a long-term care facility due to making a complaint or giving information in good faith to the State Ombudsman Program.

(3) Any person convicted of violating any provision of this section shall be guilty of a misdemeanor.

**HISTORY: Laws, 1988, ch. 592, § 9; Laws, 2017, ch. 344, § 9, eff from and after July 1, 2017.**

**Amendment Notes —** The 2017 amendment added (2) and (3).

## § 43-7-69. Confidentiality of records; policies and procedures.

The State Ombudsman shall establish policies and procedures with regard to confidentiality of resident, long-term care facility and government agency records. These policies and procedures shall ensure that:

(a) Any ombudsman shall not disclose the identity of any resident or complainant unless the resident or complainant or the legal representative of either specifically consents in writing to the disclosure.

(b) The investigatory files of any long-term care facilities ombudsman program shall be maintained as confidential information and may only be disclosed at the discretion of the State Ombudsman or their designee for such purposes set by criteria of the State Ombudsman, except as necessary for the preparation of statistical data, as required to carry out the duties of Sections 43-7-51 through 43-7-79, or as required pursuant to a court order.

**HISTORY: Laws, 1988, ch. 592, § 10; Laws, 2017, ch. 344, § 10, eff from and after July 1, 2017.**

**Amendment Notes —** The 2017 amendment substituted “The State Ombudsman” for “Each long-term care facilities ombudsman program” at the beginning of the section; and inserted “and may only be disclosed...criteria of the State Ombudsman” in (b).

## § 43-7-77. Additional powers and duties of ombudsmen; agencies to cooperate.

(1) The ombudsman may request information, cooperation and assistance from any government agency, and the agency is hereby authorized and directed to provide cooperation, assistance or information that will enable the ombudsman to properly perform any of his functions, duties and powers under the provisions of Sections 43-7-51 through 43-7-79.

(2) All advocacy organizations and organizations similar in nature to the long-term care facilities ombudsman program which receive funding or official designation from the state shall cooperate with the long-term care facilities ombudsman.

(3) The Office of the State Long-Term Care Facilities Ombudsman shall maintain a close working relationship with the legal assistance developer of the Mississippi Council on Aging through adoption of memoranda of understanding.

(4) The long-term care facilities ombudsman shall seek to establish effective coordination between programs which provide legal services for the elderly, including, but not limited to, programs funded by the Federal Legal Services Corporation or the Older Americans Act of 1965, as amended, and other entities with responsibilities relevant to the health, safety, welfare and

rights of residents in long-term care facilities through adoption of memoranda of understanding or other means.

(5) The long-term care facilities ombudsman may observe any survey in a long-term care facility conducted by a government agency.

**HISTORY: Laws, 1988, ch. 592, § 14; Laws, 2017, ch. 344, § 11, eff from and after July 1, 2017.**

**Amendment Notes** — The 2017 amendment added "through adoption of memoranda of understanding" in (3); and added "and other entities with responsibilities-...memoranda of understanding or other means" in (4).

### § 43-7-79. Recommendations, rules and regulations by State Ombudsman.

The State Ombudsman shall recommend policies and procedures to carry out the provisions of Sections 43-7-51 through 43-7-79 and propose rules and regulations to implement the provisions of Sections 43-7-51 through 43-7-79.

**HISTORY: Laws, 2017, ch. 344, § 12, eff from and after July 1, 2017.**

**Editor's Notes** — A former § 43-7-79 [Laws, 1988, ch. 592, § 15; Laws, 1992, ch. 465, § 2; Repealed by its own terms effective June 30, 1993] made the ombudsman program contingent upon receipt of federal funds.

# CHAPTER 11.

# INSTITUTIONS FOR THE AGED OR INFIRM

In General. .................................................... 43-11-1

## IN GENERAL

Sec.
43-11-7. Application for license for institution for aged or infirm or personal care home; license fees.
43-11-8. Application for license for adult foster care facility; license fees; license renewal.
43-11-9. Issuance and renewal of license for institution for aged or infirm or personal care home; user fee.
43-11-13. Rules, regulations and standards; compliance and inspection with respect to fire prevention measures; scheduled drugs in personal care homes; resident may consent in writing to continue residing in personal care home regardless of determination by licensing agency that skilled nursing services appropriate; regulations regarding patient's personal deposit accounts and use of patient food and medicine records; criminal record checks for new employees at institutions or facilities; affidavit concerning criminal offenses required of current employees; penalty for perjury; civil immunity for health care facilities regarding employment decisions; rules, regulations and standards regarding operation of adult foster care facilities.

## § 43-11-7. Application for license for institution for aged or infirm or personal care home; license fees.

Any person, as defined in Section 43-11-1, may apply for a license as provided in this section. An application for a license shall be made to the licensing agency upon forms provided by it and shall contain such information as the licensing agency reasonably requires, which may include affirmative evidence of ability to comply with such reasonable standards, rules and regulations as are lawfully prescribed under this chapter. Each application for a license for an institution for the aged or infirm, except for personal care homes, shall be accompanied by a license fee of Twenty Dollars ($20.00) for each bed in the institution, with a minimum fee per institution of Two Hundred Dollars ($200.00), which shall be paid to the licensing agency. Each application for a license for a personal care home shall be accompanied by a license fee of Fifteen Dollars ($15.00) for each bed in the institution, with a minimum fee per institution of One Hundred Dollars ($100.00), which shall be paid to the licensing agency.

Any increase in the fee charged by the licensing agency under this section shall be in accordance with the provisions of Section 41-3-65.

No governmental entity or agency shall be required to pay the fee or fees set forth in this section.

**HISTORY: Codes, 1942, § 6964-04; Laws, 1952, ch. 384, § 4; Laws, 1979, ch. 445, § 6; Laws, 1986, ch. 500, § 30; Laws, 1998, ch. 433, § 8; Laws, 2002, ch. 578, § 2; Laws, 2016, ch. 510, § 28, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 28, eff from and after July 1, 2020.**

**Editor's Notes** — Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

**Amendment Notes** — The 2016 amendment added the next-to-last paragraph.

The 2020 amendment reenacted the section without change.

## § 43-11-8. Application for license for adult foster care facility; license fees; license renewal.

(1) An application for a license for an adult foster care facility shall be made to the licensing agency upon forms provided by it and shall contain such information as the licensing agency reasonably requires, which may include affirmative evidence of ability to comply with such reasonable standards, rules and regulations as are lawfully prescribed hereunder. Each application for a license for an adult foster care facility shall be accompanied by a license fee of Ten Dollars ($10.00) for each person or bed of licensed capacity, with a minimum fee per home or institution of Fifty Dollars ($50.00), which shall be paid to the licensing agency. Any increase in the fee charged by the licensing agency under this subsection shall be in accordance with the provisions of Section 41-3-65.

(2) A license, unless suspended or revoked, shall be renewable annually upon payment by the licensee of an adult foster care facility, except for

personal care homes, of a renewal fee of Ten Dollars ($10.00) for each person or bed of licensed capacity in the institution, with a minimum renewal fee per institution of Fifty Dollars ($50.00), which shall be paid to the licensing agency, and upon filing by the licensee and approval by the licensing agency of an annual report upon such uniform dates and containing such information in such form as the licensing agency prescribes by regulation. Any increase in the fee charged by the licensing agency under this subsection shall be in accordance with the provisions of Section 41-3-65. Each license shall be issued only for the premises and person or persons or other legal entity or entities named in the application and shall not be transferable or assignable except with the written approval of the licensing agency. Licenses shall be posted in a conspicuous place on the licensed premises.

**HISTORY: Laws, 2007, ch. 552, § 3; Laws, 2016, ch. 510, § 29, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 29, eff from and after July 1, 2020.**

**Editor's Notes —** Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

**Amendment Notes —** The 2016 amendment added the last sentence of (1) and the second sentence of (2).

The 2020 amendment reenacted the section without change.

## § 43-11-9. Issuance and renewal of license for institution for aged or infirm or personal care home; user fee.

(1) Upon receipt of an application for license and the license fee, the licensing agency shall issue a license if the applicant and the institutional facilities meet the requirements established under this chapter and the requirements of Section 41-7-173 et seq., where determined by the licensing agency to be applicable. A license, unless suspended or revoked, shall be renewable annually upon payment by (a) the licensee of an institution for the aged or infirm, except for personal care homes, of a renewal fee of Twenty Dollars ($20.00) for each bed in the institution, with a minimum fee per institution of Two Hundred Dollars ($200.00), or (b) the licensee of a personal care home of a renewal fee of Fifteen Dollars ($15.00) for each bed in the institution, with a minimum fee per institution of One Hundred Dollars ($100.00), which shall be paid to the licensing agency, and upon filing by the licensee and approval by the licensing agency of an annual report upon such uniform dates and containing such information in such form as the licensing agency prescribes by regulation. Any increase in the fee charged by the licensing agency under this subsection shall be in accordance with the provisions of Section 41-3-65. Each license shall be issued only for the premises and person or persons or other legal entity or entities named in the application and shall not be transferable or assignable except with the written approval of the licensing agency. Licenses shall be posted in a conspicuous place on the licensed premises.

(2) A fee known as a "User Fee" shall be applicable and shall be paid to the licensing agency as set out in subsection (1) of this section. Any increase in the fee charged by the licensing agency under this subsection shall be in accordance with the provisions of Section 41-3-65. This user fee shall be assessed for the purpose of the required reviewing and inspections of the proposal of any institution in which there are additions, renovations, modernizations, expansion, alterations, conversions, modifications or replacement of the entire facility involved in such proposal. This fee includes the reviewing of architectural plans in all steps required. There shall be a minimum user fee of Fifty Dollars ($50.00) and a maximum user fee of Five Thousand Dollars ($5,000.00).

(3) No governmental entity or agency shall be required to pay the fee or fees set forth in this section.

**HISTORY: Codes, 1942, § 6964-05; Laws, 1952, ch. 384, § 5; Laws, 1979, ch. 445, § 7; Laws, 1980, ch. 493, § 19; Laws, 1986, ch. 437, § 30; Laws, 1986, ch. 500, § 31; Laws, 1998, ch. 433, § 9; Laws, 2016, ch. 510, § 30, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 30, eff from and after July 1, 2020.**

**Joint Legislative Committee Note** — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first sentence of subsection (2) by substituting "as set out in subsection (1) of this section" for "as set out in subsection (1) hereof of this section." The Joint Committee ratified the correction at its August 5, 2016, meeting.

**Editor's Notes** — Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

**Amendment Notes** — The 2016 amendment added the third sentence of (1); and in (2), added "of this section" at the end of the first sentence and added the second sentence.

The 2020 amendment reenacted the section without change.

## § 43-11-13. Rules, regulations and standards; compliance and inspection with respect to fire prevention measures; scheduled drugs in personal care homes; resident may consent in writing to continue residing in personal care home regardless of determination by licensing agency that skilled nursing services appropriate; regulations regarding patient's personal deposit accounts and use of patient food and medicine records; criminal record checks for new employees at institutions or facilities; affidavit concerning criminal offenses required of current employees; penalty for perjury; civil immunity for health care facilities regarding employment decisions; rules, regulations and standards regarding operation of adult foster care facilities.

(1) The licensing agency shall adopt, amend, promulgate and enforce such

rules, regulations and standards, including classifications, with respect to all institutions for the aged or infirm to be licensed under this chapter as may be designed to further the accomplishment of the purpose of this chapter in promoting adequate care of individuals in those institutions in the interest of public health, safety and welfare. Those rules, regulations and standards shall be adopted and promulgated by the licensing agency and shall be recorded and indexed in a book to be maintained by the licensing agency in its main office in the State of Mississippi, entitled "Rules, Regulations and Minimum Standards for Institutions for the Aged or Infirm" and the book shall be open and available to all institutions for the aged or infirm and the public generally at all reasonable times. Upon the adoption of those rules, regulations and standards, the licensing agency shall mail copies thereof to all those institutions in the state that have filed with the agency their names and addresses for this purpose, but the failure to mail the same or the failure of the institutions to receive the same shall in no way affect the validity thereof. The rules, regulations and standards may be amended by the licensing agency, from time to time, as necessary to promote the health, safety and welfare of persons living in those institutions.

(2) The licensee shall keep posted in a conspicuous place on the licensed premises all current rules, regulations and minimum standards applicable to fire protection measures as adopted by the licensing agency. The licensee shall furnish to the licensing agency at least once each six (6) months a certificate of approval and inspection by state or local fire authorities. Failure to comply with state laws and/or municipal ordinances and current rules, regulations and minimum standards as adopted by the licensing agency, relative to fire prevention measures, shall be prima facie evidence for revocation of license.

(3) The State Board of Health shall promulgate rules and regulations restricting the storage, quantity and classes of drugs allowed in personal care homes and adult foster care facilities. Residents requiring administration of Schedule II Narcotics as defined in the Uniform Controlled Substances Law may be admitted to a personal care home. Schedule drugs may only be allowed in a personal care home if they are administered or stored utilizing proper procedures under the direct supervision of a licensed physician or nurse.

(4)(a) Notwithstanding any determination by the licensing agency that skilled nursing services would be appropriate for a resident of a personal care home, that resident, the resident's guardian or the legally recognized responsible party for the resident may consent in writing for the resident to continue to reside in the personal care home, if approved in writing by a licensed physician. However, no personal care home shall allow more than two (2) residents, or ten percent (10%) of the total number of residents in the facility, whichever is greater, to remain in the personal care home under the provisions of this subsection (4). This consent shall be deemed to be appropriately informed consent as described in the regulations promulgated by the licensing agency. After that written consent has been obtained, the resident shall have the right to continue to reside in the personal care home for as long as the resident meets the other conditions for residing in the personal care home. A copy of the written consent and the physician's approval shall be forwarded by the personal care home to the licensing agency.

(b) The State Board of Health shall promulgate rules and regulations restricting the handling of a resident's personal deposits by the director of a personal care home. Any funds given or provided for the purpose of supplying extra comforts, conveniences or services to any resident in any personal care home, and any funds otherwise received and held from, for or on behalf of any such resident, shall be deposited by the director or other proper officer of the personal care home to the credit of that resident in an account that shall be known as the Resident's Personal Deposit Fund. No more than one (1) month's charge for the care, support, maintenance and medical attention of the resident shall be applied from the account at any one time. After the death, discharge or transfer of any resident for whose benefit any such fund has been provided, any unexpended balance remaining in his personal deposit fund shall be applied for the payment of care, cost of support, maintenance and medical attention that is accrued. If any unexpended balance remains in that resident's personal deposit fund after complete reimbursement has been made for payment of care, support, maintenance and medical attention, and the director or other proper officer of the personal care home has been or shall be unable to locate the person or persons entitled to the unexpended balance, the director or other proper officer may, after the lapse of one (1) year from the date of that death, discharge or transfer, deposit the unexpended balance to the credit of the personal care home's operating fund.

(c) The State Board of Health shall promulgate rules and regulations requiring personal care homes to maintain records relating to health condition, medicine dispensed and administered, and any reaction to that medicine. The director of the personal care home shall be responsible for explaining the availability of those records to the family of the resident at any time upon reasonable request.

(5)(a) For the purposes of this subsection (5):

(i) "Licensed entity" means a hospital, nursing home, personal care home, home health agency, hospice or adult foster care facility;

(ii) "Covered entity" means a licensed entity or a health care professional staffing agency;

(iii) "Employee" means any individual employed by a covered entity, and also includes any individual who by contract provides to the patients, residents or clients being served by the covered entity direct, hands-on, medical patient care in a patient's, resident's or client's room or in treatment or recovery rooms. The term "employee" does not include health care professional/vocational technical students performing clinical training in a licensed entity under contracts between their schools and the licensed entity, and does not include students at high schools located in Mississippi who observe the treatment and care of patients in a licensed entity as part of the requirements of an allied-health course taught in the high school, if:

1. The student is under the supervision of a licensed health care provider; and

2. The student has signed an affidavit that is on file at the student's school stating that he or she has not been convicted of or pleaded guilty or nolo contendere to a felony listed in paragraph (d) of this subsection (5), or that any such conviction or plea was reversed on appeal or a pardon was granted for the conviction or plea. Before any student may sign such an affidavit, the student's school shall provide information to the student explaining what a felony is and the nature of the felonies listed in paragraph (d) of this subsection (5).

However, the health care professional/vocational technical academic program in which the student is enrolled may require the student to obtain criminal history record checks. In such incidences, paragraph (a)(iii)1 and 2 of this subsection (5) does not preclude the licensing entity from processing submitted fingerprints of students from healthcare-related professional/vocational technical programs who, as part of their program of study, conduct observations and provide clinical care and services in a covered entity.

(b) Under regulations promulgated by the State Board of Health, the licensing agency shall require to be performed a criminal history record check on (i) every new employee of a covered entity who provides direct patient care or services and who is employed on or after July 1, 2003, and (ii) every employee of a covered entity employed before July 1, 2003, who has a documented disciplinary action by his or her present employer. In addition, the licensing agency shall require the covered entity to perform a disciplinary check with the professional licensing agency of each employee, if any, to determine if any disciplinary action has been taken against the employee by that agency.

Except as otherwise provided in paragraph (c) of this subsection (5), no such employee hired on or after July 1, 2003, shall be permitted to provide direct patient care until the results of the criminal history record check have revealed no disqualifying record or the employee has been granted a waiver. In order to determine the employee applicant's suitability for employment, the applicant shall be fingerprinted. Fingerprints shall be submitted to the licensing agency from scanning, with the results processed through the Department of Public Safety's Criminal Information Center. The fingerprints shall then be forwarded by the Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check. The licensing agency shall notify the covered entity of the results of an employee applicant's criminal history record check. If the criminal history record check discloses a felony conviction, guilty plea or plea of nolo contendere to a felony of possession or sale of drugs, murder, manslaughter, armed robbery, rape, sexual battery, sex offense listed in Section 45-33-23(h), child abuse, arson, grand larceny, burglary, gratification of lust or aggravated assault, or felonious abuse and/or battery of a vulnerable adult that has not been reversed on appeal or for which a pardon has not been granted, the employee applicant shall not be eligible to be employed by the covered entity.

(c) Any such new employee applicant may, however, be employed on a temporary basis pending the results of the criminal history record check, but any employment contract with the new employee shall be voidable if the new employee receives a disqualifying criminal history record check and no waiver is granted as provided in this subsection (5).

(d) Under regulations promulgated by the State Board of Health, the licensing agency shall require every employee of a covered entity employed before July 1, 2003, to sign an affidavit stating that he or she has not been convicted of or pleaded guilty or nolo contendere to a felony of possession or sale of drugs, murder, manslaughter, armed robbery, rape, sexual battery, any sex offense listed in Section 45-33-23(h), child abuse, arson, grand larceny, burglary, gratification of lust, aggravated assault, or felonious abuse and/or battery of a vulnerable adult, or that any such conviction or plea was reversed on appeal or a pardon was granted for the conviction or plea. No such employee of a covered entity hired before July 1, 2003, shall be permitted to provide direct patient care until the employee has signed the affidavit required by this paragraph (d). All such existing employees of covered entities must sign the affidavit required by this paragraph (d) within six (6) months of the final adoption of the regulations promulgated by the State Board of Health. If a person signs the affidavit required by this paragraph (d), and it is later determined that the person actually had been convicted of or pleaded guilty or nolo contendere to any of the offenses listed in this paragraph (d) and the conviction or plea has not been reversed on appeal or a pardon has not been granted for the conviction or plea, the person is guilty of perjury. If the offense that the person was convicted of or pleaded guilty or nolo contendere to was a violent offense, the person, upon a conviction of perjury under this paragraph, shall be punished as provided in Section 97-9-61. If the offense that the person was convicted of or pleaded guilty or nolo contendere to was a nonviolent offense, the person, upon a conviction of perjury under this paragraph, shall be punished by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

(e) The covered entity may, in its discretion, allow any employee who is unable to sign the affidavit required by paragraph (d) of this subsection (5) or any employee applicant aggrieved by an employment decision under this subsection (5) to appear before the covered entity's hiring officer, or his or her designee, to show mitigating circumstances that may exist and allow the employee or employee applicant to be employed by the covered entity. The covered entity, upon report and recommendation of the hiring officer, may grant waivers for those mitigating circumstances, which shall include, but not be limited to: (i) age at which the crime was committed; (ii) circumstances surrounding the crime; (iii) length of time since the conviction and criminal history since the conviction; (iv) work history; (v) current employment and character references; and (vi) other evidence demonstrating the ability of the individual to perform the employment responsibilities competently and that the individual does not pose a threat to the health or safety of the patients of the covered entity.

(f) The licensing agency may charge the covered entity submitting the fingerprints a fee not to exceed Fifty Dollars ($50.00), which covered entity may, in its discretion, charge the same fee, or a portion thereof, to the employee applicant. Any increase in the fee charged by the licensing agency under this paragraph shall be in accordance with the provisions of Section 41-3-65. Any costs incurred by a covered entity implementing this subsection (5) shall be reimbursed as an allowable cost under Section 43-13-116.

(g) If the results of an employee applicant's criminal history record check reveals no disqualifying event, then the covered entity shall, within two (2) weeks of the notification of no disqualifying event, provide the employee applicant with a notarized letter signed by the chief executive officer of the covered entity, or his or her authorized designee, confirming the employee applicant's suitability for employment based on his or her criminal history record check. An employee applicant may use that letter for a period of two (2) years from the date of the letter to seek employment with any covered entity without the necessity of an additional criminal history record check. Any covered entity presented with the letter may rely on the letter with respect to an employee applicant's criminal background and is not required for a period of two (2) years from the date of the letter to conduct or have conducted a criminal history record check as required in this subsection (5).

(h) The licensing agency, the covered entity, and their agents, officers, employees, attorneys and representatives, shall be presumed to be acting in good faith for any employment decision or action taken under this subsection (5). The presumption of good faith may be overcome by a preponderance of the evidence in any civil action. No licensing agency, covered entity, nor their agents, officers, employees, attorneys and representatives shall be held liable in any employment decision or action based in whole or in part on compliance with or attempts to comply with the requirements of this subsection (5).

(i) The licensing agency shall promulgate regulations to implement this subsection (5).

(j) The provisions of this subsection (5) shall not apply to:

(i) Applicants and employees of the University of Mississippi Medical Center for whom criminal history record checks and fingerprinting are obtained in accordance with Section 37-115-41; or

(ii) Health care professional/vocational technical students for whom criminal history record checks and fingerprinting are obtained in accordance with Section 37-29-232.

(6) The State Board of Health shall promulgate rules, regulations and standards regarding the operation of adult foster care facilities.

**HISTORY: Codes, 1942, § 6964-07; Laws, 1952, ch. 384, § 7; Laws, 1964, ch. 429,**

**§ 2; Laws, 1986, ch. 437, § 31; Laws, 1993, ch. 365, § 1; Laws, 2001, ch. 595, § 1; Laws, 2001, ch. 603, § 11; Laws, 2002, ch. 561, § 1; Laws, 2003, ch. 545, § 1; Laws, 2004, ch. 317, § 1; Laws, 2004, ch. 538, § 3; Laws, 2006, ch. 414, § 1; Laws, 2007, ch. 552, § 2; Laws, 2008, ch. 305, § 1; Laws, 2008, ch. 423, § 1; Laws, 2011, ch. 545, § 9; Laws, 2014, ch. 352, § 11; Laws, 2016, ch. 413, § 1; Laws, 2016, ch. 510, § 31; Laws, 2017, ch. 358, § 1, eff from and after July 1, 2017; reenacted without change, Laws, 2020, ch. 473, § 31, eff from and after July 1, 2020.**

**Joint Legislative Committee Note —** Section 1 of Chapter 413, Laws of 2016, effective July 1, 2016, amended this section. Section 31 of Chapter 510, Laws of 2016, effective July 1, 2016, also amended this section. As set out above, this section reflects the language of Section 31 of Chapter 510, Laws of 2016, which contains language that specifically provides that it supersedes § 43-11-13 as amended by Laws of 2016, ch. 413.

**Editor's Notes —** Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

**Amendment Notes —** The first 2016 amendment (ch. 413), in (5)(a), deleted "as defined in Section 37-29-232" following "vocational technical students" in the second sentence of (iii), and in the second paragraph, deleted "under the provisions of Section 37-29-232" at the end of the first sentence and added the last sentence; and in the fourth sentence of the second paragraph of (5)(b), deleted "If no disqualifying record is identified at the state level" from the beginning, and inserted "then."

The second 2016 amendment (ch. 510) added the second sentence of (5)(f); and made a minor stylistic change.

The 2017 amendment deleted (4)(d), which read: "This subsection (4) shall stand repealed on July 1, 2017."

The 2020 amendment reenacted the section without change.

# CHAPTER 12.

# MEDICAID AND HUMAN SERVICES PROVISIONS

Medicaid and Human Services Transparency and Fraud Prevention Act. .. 43-12-1
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## MEDICAID AND HUMAN SERVICES TRANSPARENCY AND FRAUD PREVENTION ACT

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## § 43-12-1. Short title.

This chapter shall be known and may be cited as the "Medicaid and Human Services Transparency and Fraud Prevention Act."

**HISTORY: Laws, 2017, ch. 421, § 1, eff from and after passage (approved Apr. 12, 2017).**

## § 43-12-3. Integration of eligibility systems.

The Division of Medicaid shall submit a final Advanced Planning Document to the Centers for Medicare and Medicaid Services (CMS) for the purpose of applying for the OMB A87 exception to support the integration of eligibility systems between the division and any applicable Department of Human Services program where an integrated system of eligibility will serve the state's interest in developing shared eligibility services across health and human services programs, while at the same time promoting and enhancing the state's efforts of ensuring maximum program integrity across each agency. In preparing the final Advanced Planning Document, the division also shall:

(a) Identify functions that can be leveraged or shared across the state Medicaid program and other Department of Human Services programs;

(b) Weigh benefits of shared systems;

(c) Identify interoperability and integration goals;

(d) Seek guidance from the Centers for Medicaid and Medicare Services (CMS) and the Office for the Administration of Children and Families (ACF) on state ideas before submitting the Advanced Planning Document; and

(e) Ensure that the enhancement to front end identity and asset verification is an integral part of the advanced planning and integration process going forward.

The division shall submit a report on its progress to the chairmen of the House and Senate Medicaid Committees within ninety (90) business days and on a quarterly basis thereafter until the final Advanced Planning Document is completed. The report also shall be provided to the other members of the Legislature upon request.

**HISTORY: Laws, 2017, ch. 421, § 2, eff from and after passage (approved Apr. 12, 2017).**

## § 43-12-5. Real-time eligibility verification service.

(1) Definitions. For purposes of Sections 43-12-5 through 43-12-17, the following definitions apply:

(a) "Department" means the Division of Medicaid or the Department of Human Services, as the case may be.

(b) "Identity information" means an applicant or recipient's full name, aliases, date of birth, address, Social Security number and other related information, including, but not limited to, the information in subsection (2)(a) of this section.

(2) Establishment of enhanced eligibility verification service.

(a) The department shall establish and use a computerized income, asset, residence and identity eligibility verification service in order to verify eligibility, eliminate the duplication of assistance, and deter waste, fraud, and abuse within each respective assistance program administered by the department. The information verified shall include, but not be limited to:

(i) Earned and unearned income;

(ii) Employment status and changes in employment;

(iii) Immigration status;

(iv) Residency status, including a nationwide best-address source to verify individuals are residents of the state;

(v) Enrollment status in other state-administered public assistance programs, as available in a cost-efficient manner;

(vi) Financial resources;

(vii) Incarceration status;

(viii) Death records;

(ix) Enrollment status in public assistance programs outside of this state, as available in a cost-efficient manner; and

(x) Potential identity fraud or identity theft.

(b) The department may issue a Request for Proposals (RFP) from multiple third-party vendors, regardless of the amount of funds to be expended under the contract, for the purposes of identifying fraud in the programs described in this chapter and pursuant to the specifications prescribed in this subsection (2). After evaluating the proposals submitted, the department shall enter into a competitively bid contract with a third-party vendor for the purposes of using and accessing an eligibility verification service by which to verify the income, assets, residence, identity, and other information in paragraph (a) of this subsection (2) to prevent fraud, misrepresentation, and inadequate documentation when determining an applicant's eligibility for assistance before the distribution of benefits, periodically between eligibility redeterminations, and during eligibility redeterminations and reviews, as prescribed in this section. The department may use more than one (1) eligibility verification service and/or third-party vendor, if doing so is more cost-efficient. The department may renegotiate an existing contract with a current vendor for the purposes stated in this paragraph (b) if doing so is more cost-efficient than issuing a Request for Proposals (RFP) from multiple third-party vendors. If the department determines that it is not more cost-efficient to renegotiate an existing contract with a current vendor, the department shall issue a Request for Proposals (RFP) from multiple third-party vendors as provided in this paragraph (b), regardless of the amount of funds to be expended under the contract. The department may also enter into a competitively bid contract with a third-party vendor to provide information to facilitate reviews of recipient eligibility conducted by the department.

(c) When the department enters into a competitively bid contract with a third-party vendor or renegotiates an existing contract with a current vendor for the purposes of carrying out this eligibility verification service, the vendor, in partnership with the department, shall be required by contract to establish annualized savings realized from implementation of the eligibility verification service. It is the intent of the Legislature that savings exceed the total yearly cost for implementing the eligibility verification service.

(d) To avoid any conflict of interest, when the department enters into a competitively bid contract with a third-party vendor or renegotiates an existing contract with a current vendor, that primary vendor may not currently or will not be allowed to bid on or be awarded a state contract to run enrollment services.

(e) It shall be the responsibility of the contracted third-party vendor to obtain access to any data, data sources and databases, not already being used by the department, for the purposes of implementing the eligibility verification service. The payment structure for the contracted third-party vendor shall be based on a per-applicant rate.

(f) Nothing in this section shall preclude the department from continuing to conduct additional eligibility verification processes, not detailed in this section, that are currently in practice; and nothing in this section shall require the department or third-party vendor to violate the Fair Credit Reporting Act.

(3) The department shall have the eligibility verification service required by this section implemented and operational not later than July 1, 2019. The department shall submit a report every six (6) months on its progress on implementing the eligibility verification service to the Chairmen of the House and Senate Appropriations Committees, the House Public Health and Human Services Committee and the Senate Public Health and Welfare Committee, and the House and Senate Medicaid Committees. The report also shall be provided to the other members of the Legislature upon request.

(4)(a) As used in this subsection, the following terms shall be defined as provided in this paragraph:

(i) "Abuse" includes any practice that is inconsistent with acceptable fiscal, business or medical practices that unnecessarily increase cost.

(ii) "Fraud" means misrepresenting the truth to obtain an unauthorized benefit.

(b) The department shall enter or have entered into a competitively-bid contract with a third-party vendor for the purposes of identifying waste, abuse and fraud in the programs administered by the department, focusing on detecting and preventing abuse and fraud by providers of services in those programs, and recovering improper payments made to providers of services in those programs.

**HISTORY: Laws, 2017, ch. 421, § 3, eff from and after July 1, 2017.**

## § 43-12-7. Enhanced eligibility verification process.

(1) Before awarding assistance, the department shall verify eligibility for assistance by using the enhanced eligibility verification service established in Section 43-12-5(2). The department shall also conduct enhanced eligibility verification under Section 43-12-5(2) periodically between eligibility redeterminations and during eligibility redeterminations when there is a risk of changes in income, assets, residency or other relevant factors and the department has determined that the benefits of enhanced eligibility verification outweigh the cost.

(2) It is the intent of the Legislature that any recipient who has moved out of state shall be terminated from the rolls of eligible recipients within three (3) months of the department being made aware of their change of residency.

**HISTORY: Laws, 2017, ch. 421, § 4, eff from and after July 1, 2019.**

## § 43-12-9. Enhanced identity authentication process.

Before awarding assistance, applicants for benefits must complete a computerized identity authentication process that shall confirm the applicant owns the identity presented in the application. The department shall continue to review the recipient's identity ownership periodically to verify and protect the identity of the recipient.

**HISTORY: Laws, 2017, ch. 421, § 5, eff from and after July 1, 2019.**

## § 43-12-11. Discrepancies and case review.

(1) If a discrepancy results from an applicant or recipient's identity information and one or more of the databases or information tools authorized under Sections 43-12-5 through 43-12-17, the department shall review the respective applicant or recipient's case using the following procedures:

(a) If the information discovered does not result in the department finding a discrepancy or change in an applicant's or recipient's circumstances that may affect eligibility, the department shall take no further action.

(b) If the information discovered under Sections 43-12-5 through 43-12-17 results in the department finding a discrepancy or change in a recipient's circumstances that may affect eligibility, the department shall promptly redetermine eligibility after receiving such information within ten (10) business days, or the minimum required by federal law.

(c) If the information discovered under Sections 43-12-5 through 43-12-17 results in the department finding a discrepancy or change in an applicant's or recipient's circumstances that may affect eligibility, the applicant or recipient shall be given an opportunity to explain the discrepancy; however, self-declarations by applicants or recipients shall not be accepted as verification of categorical and financial eligibility during eligibility evaluations, reviews, and redeterminations.

(d) Unless prohibited by federal law, the department shall provide written notice, within ten (10) business days, or the minimum required by federal law to the applicant or recipient, which shall describe in sufficient detail the circumstances of the discrepancy or change, the manner in which the applicant or recipient may respond, and the consequences of failing to take action. The applicant or recipient shall have ten (10) business days, or the minimum required by federal law, to respond in an attempt to resolve the discrepancy or change. The explanation provided by the recipient or applicant shall be given in writing. After receiving the explanation, the department may request additional documentation if it determines that there is risk of fraud, misrepresentation, or inadequate documentation.

(e) Unless prohibited by federal laws, if the applicant or recipient does not respond to the notice, the department shall, within ten (10) business days, or the minimum required by federal law deny or discontinue assistance for failure to cooperate, in which case the department shall provide notice of intent to deny or discontinue assistance. Eligibility for assistance shall not be established or reestablished until the discrepancy or change has been resolved.

(f) If an applicant or recipient responds to the notice and disagrees with the findings of the match between his or her identity information and one or more databases or information tools authorized under Sections 43-12-5 through 43-12-17, the department shall review the matter. If the department finds that there has been an error, the department shall take immediate action to correct it and no further action shall be taken. If, after a review, the department determines that there is no error, the department shall determine the effect on the applicant's or recipient's case and take appropriate action. Written notice of the respective department's action shall be given to the applicant or recipient.

(g) If the applicant or recipient agrees with the findings of the match between the applicant's or recipient's identity information and one or more databases or information tools authorized under Sections 43-12-5 through 43-12-17, the department shall determine the effect on the applicant or recipient's case and take appropriate action. Written notice of the department's action shall be given to the applicant or recipient. In no case shall the department discontinue assistance upon finding a discrepancy or change in circumstances between an individual's identity information and one or more databases or information tools authorized under Sections 43-12-5 through 43-12-17 until the applicant or recipient has been given notice of the discrepancy and the opportunity to respond as required under this section.

(2) The executive director of the department, or his or her designee, at his or her discretion may review the agency conference record of a hearing to determine that the local or state decision was correct. The executive director, or his or her designee, shall prepare a decision summarizing the issue and the basis for the decision. In cases in which the executive director, or his or her designee, finds that the facts in the record are inadequate or that incorrect policy has been applied, he or she will direct the county to get the facts or use correct policy and change the decision, reinstate the payment, or correct the amount of payment retroactively to the date of erroneous action.

(3) The department shall promulgate rules and regulations necessary for the purposes of carrying out this section.

(4) Wherever applicable and cost-effective, the Division of Medicaid and the Department of Human Services shall share data, data sources, and verification processes aimed at reducing fraud and waste.

**HISTORY: Laws, 2017, ch. 421, § 6, eff from and after July 1, 2017.**

## § 43-12-13. Referrals for fraud, misrepresentation, or inadequate documentation.

After reviewing changes or discrepancies that may affect program eligibility, the department shall refer, within forty-five (45) business days, suspected cases of fraud, misrepresentation, or inadequate documentation to appropriate agencies, divisions, or departments for review of eligibility discrepancies in other public programs. This shall also include cases where an individual is determined to be no longer eligible for the original program. In cases where fraud affecting program eligibility is substantiated, the department or other appropriate agencies shall garnish wages or state income tax refunds until the state recovers an amount equal to the amount of benefits that were fraudulently received.

**HISTORY: Laws, 2017, ch. 421, § 7, eff from and after July 1, 2019.**

## § 43-12-15. Reporting.

(1) Thirty (30) business days before entering into a competitively bid contract for the eligibility verification service required by Section 43-12-5, the department shall provide a written report to the Governor, the Chairmen of the House and Senate Appropriations Committees, the House Public Health and Human Services Committee and the Senate Public Health and Welfare Committee, and the House and Senate Medicaid Committees, detailing the data sources proposed to be used by the third-party vendor for eligibility and redeterminations, the relevancy of the information from the data sources, the frequency of how often each data source will be accessed, and an explanation of why other data sources that are readily available are not being used. The report shall include a dynamic cost-benefit analysis that shows the ratio of potential fraud detection to the types and kinds of data sources and informa-

tion tools proposed to be used by the third-party vendor. The report also shall be provided to the other members of the Legislature upon request.

(2) Six (6) months after the implementation of the eligibility verification service required by Section 43-12-5, and quarterly thereafter, the department shall provide a written report to the Governor, the chairmen of the House and Senate Appropriations Committees, the House Public Health and Human Services Committee and the Senate Public Health and Welfare Committee, and the House and Senate Medicaid Committees, detailing the effectiveness and general findings of the eligibility verification service, including the number of cases reviewed, the number of case closures, the number of referrals for criminal prosecution, recovery of improper payments, collection of civil penalties, and the savings that have resulted from the service. The report also shall be provided to the other members of the Legislature upon request.

**HISTORY: Laws, 2017, ch. 421, § 8, eff from and after passage (approved Apr. 12, 2017).**

## § 43-12-17. Transparency in Medicaid.

Following the precedent set by Medicare, the department shall electronically release to the public data that includes, but is not limited to the following: the provider's name and office locations; a provider's National Provider Identifier (NPI); the type of service provided by Healthcare Common Procedure Coding System (HCPCS) code; and whether the service was performed in a facility or office setting. This public data shall also include the number of services, average submitted charges, average allowed amount, average Medicaid payment, and a count of unique beneficiaries treated. Nothing in this section shall be construed to require the department to publicly share protected information as defined by the federal Health Insurance Portability and Accountability Act (HIPAA).

**HISTORY: Laws, 2017, ch. 421, § 9, eff from and after July 1, 2017.**

## § 43-12-19. Work requirements.

The Department of Human Services shall not seek, apply for, accept or renew any waiver of requirements established under 7 USC Section 2015(o), except during a formal state or federal declaration of a natural disaster.

**HISTORY: Laws, 2017, ch. 421, § 10, eff from and after July 1, 2017.**

## § 43-12-21. Federal asset limits for the Supplemental Nutrition Assistance Program.

In no case shall the resource limit standards of the Supplemental Nutrition Assistance Program (SNAP) exceed the standards specified in 7 USC Section 2014(g)(1), unless expressly required by federal law. In no case shall categorical eligibility exempting households from these resource limits be granted for any noncash, in-kind or other benefit, unless expressly required by federal law.

**HISTORY: Laws, 2017, ch. 421, § 11, eff from and after July 1, 2017.**

## § 43-12-23. Broad-based categorical eligibility.

(1) In no case shall categorical eligibility under 7 USC Section 2014(a) or 7 CFR Section 273.2(j)(2)(iii) be granted for any noncash, in-kind or other benefit unless expressly required by federal law for the Supplemental Nutrition Assistance Program (SNAP).

(2) The Department of Human Services shall not apply gross income standards for food assistance higher than the standards specified in 7 USC Section 2014(c) unless expressly required by federal law. Categorical eligibility exempting households from such gross income standards requirements shall not be granted for any noncash, in-kind or other benefit, unless expressly required by federal law.

**HISTORY: Laws, 2017, ch. 421, § 12, eff from and after July 1, 2019.**

## § 43-12-25. Sharing enrollee information across agencies.

(1) The Division of Medicaid and the Department of Human Services shall share eligibility information with each other within thirty (30) business days when an enrollee has been disenrolled for any financial or nonfinancial reason that may result in the enrollee's disqualification for benefits with the other department, and shall include the rationale for the action.

(2) Any department, agency or division receiving information under subsection (1) of this section shall establish procedures to redetermine eligibility for any enrollee whose eligibility or benefit levels could change as a result of new information provided under subsection (1) of this section.

**HISTORY: Laws, 2017, ch. 421, § 13, eff from and after July 1, 2019.**

## § 43-12-27. Maximum family grant.

For purposes of determining the maximum aid payment under the TANF program, the number of persons in a household shall not be increased for any child born into a household that has received aid under TANF continuously for the ten (10) months before the birth of the child.

**HISTORY: Laws, 2017, ch. 421, § 14, eff from and after July 1, 2017.**

## § 43-12-29. Verify identities and household composition, and all expenses of welfare applicants.

The Department of Human Services shall verify identity, household composition, expenses, and any other factor affecting eligibility allowed under 7 CFR Section 273.2(f)(3).

**HISTORY: Laws, 2017, ch. 421, § 15, eff from and after July 1, 2019.**

## § 43-12-31. Full cooperation with fraud investigations.

The Department of Human Services shall communicate the expectation of mandatory cooperation with a fraud investigation and that noncompliance could result in case closure and termination of benefits within thirty (30) business days.

**HISTORY: Laws, 2017, ch. 421, § 16, eff from and after July 1, 2017.**

## § 43-12-33. Gaps in eligibility reporting.

The Department of Human Services shall not establish or use a simplified reporting system under 7 CFR Section 273.12(a)(5). The department shall provide a written report to the Chairmen of the House and Senate Appropriations Committees, the House Public Health and Human Services Committee and the Senate Public Health and Welfare Committee, and the House and Senate Medicaid Committees, on the costs and state and federal savings of not using a simplified reporting system. The report also shall be provided to the other members of the Legislature upon request.

**HISTORY: Laws, 2017, ch. 421, § 17, eff from and after July 1, 2019.**

## § 43-12-35. Noncompliance with Temporary Assistance for Needy Families program rules.

(1) The Department of Human Services shall only grant benefits when an approved applicant has signed a written agreement clearly enumerating continued eligibility requirements, circumstances in which sanctions may be imposed, and any potential penalties for noncompliance.

(2) The department shall require all enrollees to be compliant with all program requirements, including work requirements, before granting benefits.

(3) The department shall institute a three-month, full-household sanction for the first instance of noncompliance with any TANF requirement, unless expressly prohibited by federal law.

(4) The department shall terminate benefits for the second instance of noncompliance with any TANF requirement, unless expressly prohibited by federal law.

(5) An individual sanctioned under subsection (3) of this section shall not have benefits reinstated without reviewing the agreement required under subsection (1) of this section.

(6) The department shall deny benefits to any adult member of a household where another adult member of the household has been found to have committed benefits fraud.

**HISTORY: Laws, 2017, ch. 421, § 18, eff from and after July 1, 2017.**

## § 43-12-37. Noncompliance with Supplemental Nutrition Assistance Program rules.

(1) The Department of Human Services shall set disqualification periods for all instances of noncompliance with any SNAP requirement, unless expressly prohibited by federal law.

(2) The department shall institute a three-month, full-household disqualification period for the first instance of noncompliance, unless expressly prohibited by federal law.

(3) The department shall institute a six-month, full-household disqualification period for the second instance of noncompliance, unless expressly prohibited by federal law.

(4) The department shall institute a permanent disqualification period for the third instance of noncompliance, unless expressly prohibited by federal law.

(5) If a recipient is subject to a disqualification period under subsection (4) of this section, the department shall institute a six-month disqualification period for the recipient's entire household, unless expressly prohibited by federal law.

(6) Unless expressly prohibited by federal law, recipients shall be subject to disqualification for failure to perform actions required by other federal, state, or local means-tested public assistance programs.

**HISTORY: Laws, 2017, ch. 421, § 19, eff from and after July 1, 2019.**

## § 43-12-39. Out-of-state spending.

(1) The Department of Human Services shall post on its website and make available on an annual basis to the chairmen of the House and Senate Appropriations Committees, the House Public Health and Human Services Committee and the Senate Public Health and Welfare Committee a report of SNAP and TANF benefit spending. The report also shall be provided to the other members of the Legislature upon request.

(2) The report required under subsection (1) of this section shall include:

(a) The dollar amount and number of transactions of SNAP benefits that are accessed or spent out-of-state, disaggregated by state;

(b) The dollar amount and number of transactions of TANF benefits that are accessed or spent out-of-state, disaggregated by state;

(c) The dollar amount, number of transactions, and times of transactions of SNAP benefits that are accessed or spent in-state, disaggregated by retailer, institution, or location, unless expressly prohibited by federal law; and

(d) The dollar amount, number of transactions, and time of transactions of TANF benefits that are accessed or spent in-state, disaggregated by retailer, institution, or location.

(3) The report required under subsection (1) of this section shall be de-identified to prevent identification of individual recipients.

**HISTORY: Laws, 2017, ch. 421, § 20, eff from and after July 1, 2019.**

## § 43-12-41. Public reporting.

(1) The Division of Medicaid and the Department of Human Services shall provide on an annual basis to the chairmen of the House and Senate Appropriations Committees, the House Public Health and Human Services Committee and the Senate Public Health and Welfare Committee, and the House and Senate Medicaid Committees, a report of characteristics of recipients of Medicaid, SNAP and TANF benefits. The report also shall be provided to the other members of the Legislature upon request.

(2) The report required under subsection (1) of this section shall include:

(a) The length of enrollment, disaggregated by program and eligibility group;

(b) The share of recipients concurrently enrolled in one or more additional means-tested programs, disaggregated by program and eligibility group;

(c) The number of means-tested programs recipients are concurrently enrolled in, disaggregated by program and eligibility group;

(d) The demographics and characteristics of recipients, disaggregated by program and eligibility group; and

(e) The dollar amount spent on advertising and marketing for TANF, SNAP, Medicaid, and other means-tested programs, including both state and federal funds, disaggregated by program.

(3) The report required under subsection (1) of this section shall be de-identified to prevent identification of individual recipients.

**HISTORY: Laws, 2017, ch. 421, § 21, eff from and after July 1, 2017.**

## § 43-12-43. Pilot program for photos on EBT cards.

(1) The Department of Human Services may establish a pilot program in which a photograph of the recipient is included on any electronic benefits transfer card issued by the department to the recipient, unless the recipient declines to have the photograph included. When a recipient is a minor or otherwise incapacitated individual, a parent or legal guardian of such recipient may have a photograph of such parent or legal guardian placed on the card.

(2) The Department of Human Services shall explore opportunities with other state agencies, departments, or divisions, including the Department of Public Safety, to share photographs when available. The Department of Human Services may sign one or more memorandum of understanding with such agencies, departments, or divisions as necessary to implement this section.

**HISTORY: Laws, 2017, ch. 421, § 22, eff from and after July 1, 2019.**

## § 43-12-45. Limits on spending locations.

(1) Funds available on electronic benefit transfer cards shall not be used

to purchase alcohol, liquor or imitation liquor, cigarettes, tobacco products, bail, gambling activities, lottery tickets, tattoos, travel services provided by a travel agent, money transmission to locations abroad, sexually oriented adult materials, concert tickets, professional or collegiate sporting event tickets, or tickets for other entertainment events intended for the general public.

(2) Electronic benefit transfer card transactions shall be prohibited at all retail liquor stores, casinos, gaming establishments, jewelry stores, tattoo parlors, massage parlors, body piercing parlors, spas, nail salons, lingerie shops, tobacco paraphernalia stores, vapor cigarette stores, psychic or fortune telling businesses, bail bond companies, video arcades, movie theaters, cruise ships, theme parks, dog or horse racing facilities, pari-mutuel facilities, sexually oriented businesses, retail establishments that provide adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment, and businesses or retail establishments where minors under eighteen (18) years of age are not permitted.

(3) Upon enrollment, the Department of Human Services shall provide new applicants an itemized list of prohibited purchases, including those specified in subsection (1) of this section, and make such a list available on the department's website.

(4) The department shall prohibit establishments identified under subsection (2) of this section from operating ATMs that accept electronic benefit transfer cards. Businesses found in violation of this subsection shall be subject to appropriate licensing sanctions.

(5) If a recipient is found to have violated subsection (1) of this section, the department shall issue a warning in writing to the recipient. The recipient shall be subject to disqualification of benefits for up to three (3) months following the first offense and a permanent termination of benefits following the second offense, unless expressly prohibited by federal law.

**HISTORY: Laws, 2017, ch. 421, § 23, eff from and after July 1, 2019.**

## § 43-12-47. Excessive EBT card loss.

(1) The Department of Human Services shall send all recipients that have requested four (4) replacement cards within a twelve-month-period a letter informing them that another request shall require participation in a face-to-face interview with a fraud investigator and eligibility expert.

(2) If a third-party vendor is administering replacement cards directly to recipients, it shall notify the department after the request for a fourth replacement card in a twelve-month-period, and any subsequent request thereafter.

(3) Upon a recipient's request of a fifth replacement card within any twelve-month-period, and any subsequent request thereafter, the department shall schedule an interview, within thirty (30) business days, with a fraud investigator and eligibility expert before another new card is issued.

(4) Unless expressly prohibited by federal law, if a recipient fails to appear at an interview scheduled under subsection (3) of this section, the department

shall terminate the recipient's benefits within ten (10) business days, or the minimum required by federal law.

**HISTORY: Laws, 2017, ch. 421, § 24, eff from and after July 1, 2019.**

## MISCELLANEOUS PROVISIONS

Sec.
43-12-71. Eligibility for TANF or SNAP benefits following certain criminal convictions.

### § 43-12-71. Eligibility for TANF or SNAP benefits following certain criminal convictions

As provided in 21 USC Section 862a(d)(1), Mississippi opts out of the application of 21 USC Section 862a(a) to all individuals domiciled in the state.

**HISTORY: Laws, 2019, ch. 466, § 38, eff from and after July 1, 2019.**

**Editor's Note —** Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Supplemental nutrition assistance program (SNAP), see 7 USCS § 2011.

**Federal Aspects —** Temporary assistance for needy families (TANF), see 42 USCS § 601 et seq.

# CHAPTER 13.

# MEDICAL ASSISTANCE FOR THE AGED; MEDICAID

Article 3. Medicaid. .......... 43-13-101
Article 9. Health Care Trust Fund for Tobacco Settlement Funds. .. 43-13-401

## ARTICLE 1.

## MEDICAL ASSISTANCE FOR THE AGED.

### § 43-13-5. Medical assistance for the aged.

#### JUDICIAL DECISIONS

**1. Freedom of choice.**

Mississippi Division of Medicaid's prohibition of respiratory therapists in small and large nursing facilities, but approval of the same in hospitals and higher acuity nursing facilities, did not violate the freedom of choice provision. CLC of Biloxi, LLC v. Miss. Div. of Medicaid, 238 So. 3d 16, 2018 Miss. App. LEXIS 73 (Miss. Ct. App. 2018).

# ARTICLE 3.

# MEDICAID.

Sec.

| | |
|---|---|
| 43-13-107. | Division of Medicaid created; director and other personnel; Medical Care Advisory Committee; Drug Use Review Board; Pharmacy and Therapeutics Committee. |
| 43-13-117. | Types of care and services for which financial assistance furnished [Repealed effective July 1, 2021]. |
| 43-13-117.4. | Payment by Division of Medicaid of costs of care and services rendered by an entity that performs nontherapeutic abortions or maintains or operates or is affiliated with an entity that maintains or operates a facility where nontherapeutic abortions are performed prohibited. |
| 43-13-117.5. | Reimbursement for services provided eligible beneficiaries by licensed freestanding psychiatric hospital authorized. |
| 43-13-119. | Repealed. |
| 43-13-121. | Authority to administer article. |
| 43-13-145. | Assessment levied upon health care facilities; keeping of records; collection of assessments; effect of delinquency in payment [Subsections (4) and (10) through (15) repealed effective July 1, 2024]. |
| 43-13-149. | Repealed. |

## § 43-13-107. Division of Medicaid created; director and other personnel; Medical Care Advisory Committee; Drug Use Review Board; Pharmacy and Therapeutics Committee.

(1) The Division of Medicaid is created in the Office of the Governor and established to administer this article and perform such other duties as are prescribed by law.

(2)(a) The Governor shall appoint a full-time executive director, with the advice and consent of the Senate, who shall be either (i) a physician with administrative experience in a medical care or health program, or (ii) a person holding a graduate degree in medical care administration, public health, hospital administration, or the equivalent, or (iii) a person holding a bachelor's degree with at least three (3) years' experience in management-level administration of, or policy development for, Medicaid programs. Provided, however, no one who has been a member of the Mississippi Legislature during the previous three (3) years may be Executive Director. The executive director shall be the official secretary and legal custodian of the records of the division; shall be the agent of the division for the purpose of receiving all service of process, summons and notices directed to the division; shall perform such other duties as the Governor may prescribe from time to time; and shall perform all other duties that are now or may be imposed upon him or her by law.

(b) The executive director shall serve at the will and pleasure of the Governor.

(c) The executive director shall, before entering upon the discharge of the duties of the office, take and subscribe to the oath of office prescribed by the Mississippi Constitution and shall file the same in the Office of the Secretary of State, and shall execute a bond in some surety company authorized to do business in the state in the penal sum of One Hundred Thousand Dollars ($100,000.00), conditioned for the faithful and impartial discharge of the duties of the office. The premium on the bond shall be paid as provided by law out of funds appropriated to the Division of Medicaid for contractual services.

(d) The executive director, with the approval of the Governor and subject to the rules and regulations of the State Personnel Board, shall employ such professional, administrative, stenographic, secretarial, clerical and technical assistance as may be necessary to perform the duties required in administering this article and fix the compensation for those persons, all in accordance with a state merit system meeting federal requirements. When the salary of the executive director is not set by law, that salary shall be set by the State Personnel Board. No employees of the Division of Medicaid shall be considered to be staff members of the immediate Office of the Governor; however, Section 25-9-107(c)(xv) shall apply to the executive director and other administrative heads of the division.

(3)(a) There is established a Medical Care Advisory Committee, which shall be the committee that is required by federal regulation to advise the Division of Medicaid about health and medical care services.

(b) The advisory committee shall consist of not less than eleven (11) members, as follows:

(i) The Governor shall appoint five (5) members, one (1) from each congressional district and one (1) from the state at large;

(ii) The Lieutenant Governor shall appoint three (3) members, one (1) from each Supreme Court district;

(iii) The Speaker of the House of Representatives shall appoint three (3) members, one (1) from each Supreme Court district.

All members appointed under this paragraph shall either be health care providers or consumers of health care services. One (1) member appointed by each of the appointing authorities shall be a board-certified physician.

(c) The respective Chairmen of the House Medicaid Committee, the House Public Health and Human Services Committee, the House Appropriations Committee, the Senate Medicaid Committee, the Senate Public Health and Welfare Committee and the Senate Appropriations Committee, or their designees, one (1) member of the State Senate appointed by the Lieutenant Governor and one (1) member of the House of Representatives appointed by the Speaker of the House, shall serve as ex officio nonvoting members of the advisory committee.

(d) In addition to the committee members required by paragraph (b), the advisory committee shall consist of such other members as are necessary to meet the requirements of the federal regulation applicable to the advisory committee, who shall be appointed as provided in the federal regulation.

(e) The chairmanship of the advisory committee shall be elected by the voting members of the committee annually and shall not serve more than two (2) consecutive years as chairman.

(f) The members of the advisory committee specified in paragraph (b) shall serve for terms that are concurrent with the terms of members of the Legislature, and any member appointed under paragraph (b) may be reappointed to the advisory committee. The members of the advisory committee specified in paragraph (b) shall serve without compensation, but shall receive reimbursement to defray actual expenses incurred in the performance of committee business as authorized by law. Legislators shall receive per diem and expenses, which may be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session.

(g) The advisory committee shall meet not less than quarterly, and advisory committee members shall be furnished written notice of the meetings at least ten (10) days before the date of the meeting.

(h) The executive director shall submit to the advisory committee all amendments, modifications and changes to the state plan for the operation of the Medicaid program, for review by the advisory committee before the amendments, modifications or changes may be implemented by the division.

(i) The advisory committee, among its duties and responsibilities, shall:

(i) Advise the division with respect to amendments, modifications and changes to the state plan for the operation of the Medicaid program;

(ii) Advise the division with respect to issues concerning receipt and disbursement of funds and eligibility for Medicaid;

(iii) Advise the division with respect to determining the quantity, quality and extent of medical care provided under this article;

(iv) Communicate the views of the medical care professions to the division and communicate the views of the division to the medical care professions;

(v) Gather information on reasons that medical care providers do not participate in the Medicaid program and changes that could be made in the program to encourage more providers to participate in the Medicaid program, and advise the division with respect to encouraging physicians and other medical care providers to participate in the Medicaid program;

(vi) Provide a written report on or before November 30 of each year to the Governor, Lieutenant Governor and Speaker of the House of Representatives.

(4)(a) There is established a Drug Use Review Board, which shall be the board that is required by federal law to:

(i) Review and initiate retrospective drug use, review including ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists and individuals receiving Medicaid benefits or associated with specific drugs or groups of drugs.

(ii) Review and initiate ongoing interventions for physicians and pharmacists, targeted toward therapy problems or individuals identified in the course of retrospective drug use reviews.

(iii) On an ongoing basis, assess data on drug use against explicit predetermined standards using the compendia and literature set forth in federal law and regulations.

(b) The board shall consist of not less than twelve (12) members appointed by the Governor, or his designee.

(c) The board shall meet at least quarterly, and board members shall be furnished written notice of the meetings at least ten (10) days before the date of the meeting.

(d) The board meetings shall be open to the public, members of the press, legislators and consumers. Additionally, all documents provided to board members shall be available to members of the Legislature in the same manner, and shall be made available to others for a reasonable fee for copying. However, patient confidentiality and provider confidentiality shall be protected by blinding patient names and provider names with numerical or other anonymous identifiers. The board meetings shall be subject to the Open Meetings Act (Sections 25-41-1 through 25-41-17). Board meetings conducted in violation of this section shall be deemed unlawful.

(5)(a) There is established a Pharmacy and Therapeutics Committee, which shall be appointed by the Governor, or his designee.

(b) The committee shall meet as often as needed to fulfill its responsibilities and obligations as set forth in this section, and committee members shall be furnished written notice of the meetings at least ten (10) days before the date of the meeting.

(c) The committee meetings shall be open to the public, members of the press, legislators and consumers. Additionally, all documents provided to committee members shall be available to members of the Legislature in the same manner, and shall be made available to others for a reasonable fee for copying. However, patient confidentiality and provider confidentiality shall be protected by blinding patient names and provider names with numerical or other anonymous identifiers. The committee meetings shall be subject to the Open Meetings Act (Sections 25-41-1 through 25-41-17). Committee meetings conducted in violation of this section shall be deemed unlawful.

(d) After a thirty-day public notice, the executive director, or his or her designee, shall present the division's recommendation regarding prior approval for a therapeutic class of drugs to the committee. However, in circumstances where the division deems it necessary for the health and safety of Medicaid beneficiaries, the division may present to the committee its recommendations regarding a particular drug without a thirty-day public notice. In making that presentation, the division shall state to the committee the circumstances that precipitate the need for the committee to review the status of a particular drug without a thirty-day public notice. The committee may determine whether or not to review the particular drug under the circumstances stated by the division without a thirty-day public notice. If the committee determines to review the status of the particular drug, it shall make its recommendations to the division, after which the division shall file those recommendations for a thirty-day public comment under Section 25-43-7(1).

(e) Upon reviewing the information and recommendations, the committee shall forward a written recommendation approved by a majority of the committee to the executive director, or his or her designee. The decisions of the committee regarding any limitations to be imposed on any drug or its use for a specified indication shall be based on sound clinical evidence found in labeling, drug compendia, and peer reviewed clinical literature pertaining to use of the drug in the relevant population.

(f) Upon reviewing and considering all recommendations including recommendations of the committee, comments, and data, the executive director shall make a final determination whether to require prior approval of a therapeutic class of drugs, or modify existing prior approval requirements for a therapeutic class of drugs.

(g) At least thirty (30) days before the executive director implements new or amended prior authorization decisions, written notice of the executive director's decision shall be provided to all prescribing Medicaid providers, all Medicaid enrolled pharmacies, and any other party who has requested the notification. However, notice given under Section 25-43-7(1) will substitute for and meet the requirement for notice under this subsection.

(h) Members of the committee shall dispose of matters before the committee in an unbiased and professional manner. If a matter being considered by the committee presents a real or apparent conflict of interest for any member of the committee, that member shall disclose the conflict in writing to the committee chair and recuse himself or herself from any discussions and/or actions on the matter.

**HISTORY: Codes, 1942, § 7290-34; Laws, 1969, Ex Sess, ch. 37, § 4; Laws, 1973, ch. 312, § 1; Laws, 1980, ch. 560, § 10; Laws, 1984, ch. 488, § 41; Laws, 2000, ch. 301, § 3; Laws, 2000, ch. 498, § 1; Laws, 2002, ch. 304, § 4; Laws, 2003, ch. 543, § 4; Laws, 2004, ch. 593, § 1; Laws, 2007, ch. 553, § 1; brought forward without change, Laws, 2008, ch. 360, § 1; Laws, 2009, 2nd Ex Sess, ch. 118, § 1; Laws, 2012, ch. 530, § 1; Laws, 2013, 2nd Ex Sess, ch. 1, § 1; Laws, 2015, ch. 473, § 1; Laws, 2017, ch. 304, § 1; Laws, 2017, ch. 408, § 1, eff from and after July 1, 2017.**

**Joint Legislative Committee Note —** Section 1 of Chapter 304, Laws of 2017, effective from and after July 1, 2017 (approved March 6, 2017), amended this section. Section 1 of Chapter 408, Laws of 2017, effective from and after July 1, 2017 (approved April 6, 2017), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section amended within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 15, 2017, meeting of the Committee.

**Editor's Notes —** Laws of 2018, ch. 400, § 1, effective March 19, 2018, provides:

"SECTION 1: The Legislature finds and declares:

"(a) A rare disease is defined as a disease that affects fewer than two hundred thousand (200,000) people in the United States. Rare diseases are sometimes called orphan diseases. There are seven thousand (7,000) known rare diseases affecting approximately thirty million (30,000,000) men, women and children in the United

States;

"(b) The exact cause for many rare diseases remains unknown. However, eighty percent (80%) of rare diseases are genetic in origin and can be linked to mutations in a single gene or in multiple genes. Those diseases are referred to as genetic diseases. Genetic disease can be passed down from generation to generation, explaining why certain rare diseases run in families. It is also estimated that about half of all rare diseases affect children;

"(c) A person suffering with a rare disease in Mississippi faces a wide range of challenges, including, but not limited to: delays in obtaining a diagnosis; misdiagnosis; shortage of medical specialists who are familiar with, and can provide treatment for, rare diseases; prohibitive cost of treatment; and the inability to access therapies and medication that are used by doctors to treat rare diseases but have not been approved by the federal Food and Drug Administration (FDA) for that specific purpose;

"(d) In recent years, researchers have made considerable progress in developing diagnostic tools and treatment protocols for, and in discovering ways to prevent a variety of, rare diseases. However, much more remains to be done in the areas of rare disease research and the search for and development of new therapeutics; and

"(e) It would be very beneficial to persons in Mississippi with rare diseases and to researchers who are trying to find ways to treat or prevent the occurrence of rare diseases to examine the existing data on rare diseases in Mississippi and compile it in a detailed report, which then could be analyzed and used to educate medical professionals, government agencies and the public about rare diseases as an important public health issue, and to encourage and fund research in the development of new treatments for rare diseases."

Laws of 2018, ch. 400, § 2, effective March 19, 2018, provides:

"SECTION 2. The University of Mississippi Medical Center (UMMC) as the lead agency, together with the State Department of Health, the Division of Medicaid and the Mississippi Health Information Network (MS-HIN), shall cooperate with each other in preparing a comprehensive report on the state of rare diseases in Mississippi, including the incidence of rare diseases in the state, the status of the rare disease community, and treatment and services provided to persons with rare diseases in the state. The State Department of Health, the Division of Medicaid and the MS-HIN shall provide to UMMC and each other all claims data and patient encounter data relating to the diagnosis and treatment of rare diseases and all related research and documentation relating to rare diseases, which shall be compiled, examined and analyzed in the report. The report shall be presented to the Chairs of the House Public Health and Human Services Committee, Senate Public Health and Welfare Committee, and the House and Senate Medicaid Committees not later than December 1, 2019."

**Amendment Notes** — The first 2017 amendment (ch. 304), in (3)(c), inserted "the Senate Medicaid Committee," and substituted "one (1) member of the State Senate" for "two (2) members of the State Senate."

The second 2017 amendment (ch. 408), in (2)(a), in the first sentence, rewrote (iii), which read: "a person holding a bachelor's degree in business administration or hospital administration, with at least ten (10) years' experience in management-level administration of Medicaid programs" and added the following sentence.

## § 43-13-117. Types of care and services for which financial assistance furnished [Repealed effective July 1, 2021].

(A) Medicaid as authorized by this article shall include payment of part or all of the costs, at the discretion of the division, with approval of the Governor and the Centers for Medicare and Medicaid Services, of the following types of care and services rendered to eligible applicants who have been determined to be eligible for that care and services, within the limits of state appropriations and federal matching funds:

(1) Inpatient hospital services.

(a) The division shall allow thirty (30) days of inpatient hospital care annually for all Medicaid recipients. Medicaid recipients requiring transplants shall not have those days included in the transplant hospital stay count against the thirty-day limit for inpatient hospital care. Precertification of inpatient days must be obtained as required by the division.

(b) From and after July 1, 1994, the Executive Director of the Division of Medicaid shall amend the Mississippi Title XIX Inpatient Hospital Reimbursement Plan to remove the occupancy rate penalty from the calculation of the Medicaid Capital Cost Component utilized to determine total hospital costs allocated to the Medicaid program.

(c) Hospitals may receive an additional payment for the implantable programmable baclofen drug pump used to treat spasticity that is implanted on an inpatient basis. The payment pursuant to written invoice will be in addition to the facility's per diem reimbursement and will represent a reduction of costs on the facility's annual cost report, and shall not exceed Ten Thousand Dollars ($10,000.00) per year per recipient.

(d) The division is authorized to implement an All Patient Refined Diagnosis Related Groups (APR-DRG) reimbursement methodology for inpatient hospital services.

(e) No service benefits or reimbursement limitations in this section shall apply to payments under an APR-DRG or Ambulatory Payment Classification (APC) model or a managed care program or similar model described in subsection (H) of this section unless specifically authorized by the division.

(2) Outpatient hospital services.

(a) Emergency services.

(b) Other outpatient hospital services. The division shall allow benefits for other medically necessary outpatient hospital services (such as chemotherapy, radiation, surgery and therapy), including outpatient services in a clinic or other facility that is not located inside the hospital, but that has been designated as an outpatient facility by the hospital, and that was in operation or under construction on July 1, 2009, provided that the costs and charges associated with the operation of the hospital clinic are included in the hospital's cost report. In addition, the Medicare thirty-five-mile rule will apply to those hospital clinics not located inside the hospital that are constructed after July 1, 2009. Where the same services are reimbursed as clinic services, the division may revise the rate or methodology of outpatient reimbursement to maintain consistency, efficiency, economy and quality of care.

(c) The division is authorized to implement an Ambulatory Payment Classification (APC) methodology for outpatient hospital services. The division may give rural hospitals that have fifty (50) or fewer licensed beds the option to not be reimbursed for outpatient hospital services using the

APC methodology, but reimbursement for outpatient hospital services provided by those hospitals shall be based on one hundred one percent (101%) of the rate established under Medicare for outpatient hospital services. Those hospitals choosing to not be reimbursed under the APC methodology shall remain under cost-based reimbursement for a two-year period.

(d) No service benefits or reimbursement limitations in this section shall apply to payments under an APR-DRG or APC model or a managed care program or similar model described in subsection (H) of this section.

(3) Laboratory and x-ray services.

(4) Nursing facility services.

(a) The division shall make full payment to nursing facilities for each day, not exceeding forty-two (42) days per year, that a patient is absent from the facility on home leave. Payment may be made for the following home leave days in addition to the forty-two-day limitation: Christmas, the day before Christmas, the day after Christmas, Thanksgiving, the day before Thanksgiving and the day after Thanksgiving.

(b) From and after July 1, 1997, the division shall implement the integrated case-mix payment and quality monitoring system, which includes the fair rental system for property costs and in which recapture of depreciation is eliminated. The division may reduce the payment for hospital leave and therapeutic home leave days to the lower of the case-mix category as computed for the resident on leave using the assessment being utilized for payment at that point in time, or a case-mix score of 1.000 for nursing facilities, and shall compute case-mix scores of residents so that only services provided at the nursing facility are considered in calculating a facility's per diem.

(c) From and after July 1, 1997, all state-owned nursing facilities shall be reimbursed on a full reasonable cost basis.

(d) On or after January 1, 2015, the division shall update the case-mix payment system resource utilization grouper and classifications and fair rental reimbursement system. The division shall develop and implement a payment add-on to reimburse nursing facilities for ventilator-dependent resident services.

(e) The division shall develop and implement, not later than January 1, 2001, a case-mix payment add-on determined by time studies and other valid statistical data that will reimburse a nursing facility for the additional cost of caring for a resident who has a diagnosis of Alzheimer's or other related dementia and exhibits symptoms that require special care. Any such case-mix add-on payment shall be supported by a determination of additional cost. The division shall also develop and implement as part of the fair rental reimbursement system for nursing facility beds, an Alzheimer's resident bed depreciation enhanced reimbursement system that will provide an incentive to encourage nursing facilities to convert or construct beds for residents with Alzheimer's or other related dementia.

(f) The division shall develop and implement an assessment process for long-term care services. The division may provide the assessment and related functions directly or through contract with the area agencies on aging.

The division shall apply for necessary federal waivers to assure that additional services providing alternatives to nursing facility care are made available to applicants for nursing facility care.

(5) Periodic screening and diagnostic services for individuals under age twenty-one (21) years as are needed to identify physical and mental defects and to provide health care treatment and other measures designed to correct or ameliorate defects and physical and mental illness and conditions discovered by the screening services, regardless of whether these services are included in the state plan. The division may include in its periodic screening and diagnostic program those discretionary services authorized under the federal regulations adopted to implement Title XIX of the federal Social Security Act, as amended. The division, in obtaining physical therapy services, occupational therapy services, and services for individuals with speech, hearing and language disorders, may enter into a cooperative agreement with the State Department of Education for the provision of those services to handicapped students by public school districts using state funds that are provided from the appropriation to the Department of Education to obtain federal matching funds through the division. The division, in obtaining medical and mental health assessments, treatment, care and services for children who are in, or at risk of being put in, the custody of the Mississippi Department of Human Services may enter into a cooperative agreement with the Mississippi Department of Human Services for the provision of those services using state funds that are provided from the appropriation to the Department of Human Services to obtain federal matching funds through the division.

(6) Physician's services. Physician visits as determined by the division and in accordance with federal laws and regulations. The division may develop and implement a different reimbursement model or schedule for physician's services provided by physicians based at an academic health care center and by physicians at rural health centers that are associated with an academic health care center. From and after January 1, 2010, all fees for physician's services that are covered only by Medicaid shall be increased to ninety percent (90%) of the rate established on January 1, 2018, and as may be adjusted each July thereafter, under Medicare. The division may provide for a reimbursement rate for physician's services of up to one hundred percent (100%) of the rate established under Medicare for physician's services that are provided after the normal working hours of the physician, as determined in accordance with regulations of the division. The division may reimburse eligible providers as determined by the Patient Protection and Affordable Care Act for certain primary care services as defined by the act at one hundred percent (100%) of the rate established under Medicare. Additionally, the division shall reimburse obstetricians and gynecologists for certain primary care services as defined by the division at one hundred percent (100%) of the rate established under Medicare.

(7)(a) Home health services for eligible persons, not to exceed in cost the prevailing cost of nursing facility services. All home health visits must be precertified as required by the division.

(b) [Repealed]

(8) Emergency medical transportation services as determined by the division.

(9) Prescription drugs and other covered drugs and services as may be determined by the division.

The division shall establish a mandatory preferred drug list. Drugs not on the mandatory preferred drug list shall be made available by utilizing prior authorization procedures established by the division.

The division may seek to establish relationships with other states in order to lower acquisition costs of prescription drugs to include single-source and innovator multiple-source drugs or generic drugs. In addition, if allowed by federal law or regulation, the division may seek to establish relationships with and negotiate with other countries to facilitate the acquisition of prescription drugs to include single-source and innovator multiple-source drugs or generic drugs, if that will lower the acquisition costs of those prescription drugs.

The division may allow for a combination of prescriptions for single-source and innovator multiple-source drugs and generic drugs to meet the needs of the beneficiaries.

The executive director may approve specific maintenance drugs for beneficiaries with certain medical conditions, which may be prescribed and dispensed in three-month supply increments.

Drugs prescribed for a resident of a psychiatric residential treatment facility must be provided in true unit doses when available. The division may require that drugs not covered by Medicare Part D for a resident of a long-term care facility be provided in true unit doses when available. Those drugs that were originally billed to the division but are not used by a resident in any of those facilities shall be returned to the billing pharmacy for credit to the division, in accordance with the guidelines of the State Board of Pharmacy and any requirements of federal law and regulation. Drugs shall be dispensed to a recipient and only one (1) dispensing fee per month may be charged. The division shall develop a methodology for reimbursing for restocked drugs, which shall include a restock fee as determined by the division not exceeding Seven Dollars and Eighty-two Cents ($7.82).

Except for those specific maintenance drugs approved by the executive director, the division shall not reimburse for any portion of a prescription that exceeds a thirty-one-day supply of the drug based on the daily dosage.

The division is authorized to develop and implement a program of payment for additional pharmacist services as may be determined by the division.

All claims for drugs for dually eligible Medicare/Medicaid beneficiaries that are paid for by Medicare must be submitted to Medicare for payment before they may be processed by the division's online payment system.

The division shall develop a pharmacy policy in which drugs in tamper-resistant packaging that are prescribed for a resident of a nursing facility but are not dispensed to the resident shall be returned to the pharmacy and not billed to Medicaid, in accordance with guidelines of the State Board of Pharmacy.

The division shall develop and implement a method or methods by which the division will provide on a regular basis to Medicaid providers who are authorized to prescribe drugs, information about the costs to the Medicaid program of single-source drugs and innovator multiple-source drugs, and information about other drugs that may be prescribed as alternatives to those single-source drugs and innovator multiple-source drugs and the costs to the Medicaid program of those alternative drugs.

Notwithstanding any law or regulation, information obtained or maintained by the division regarding the prescription drug program, including trade secrets and manufacturer or labeler pricing, is confidential and not subject to disclosure except to other state agencies.

The dispensing fee for each new or refill prescription, including nonlegend or over-the-counter drugs covered by the division, shall be not less than Three Dollars and Ninety-one Cents ($3.91), as determined by the division.

The division shall not reimburse for single-source or innovator multiple-source drugs if there are equally effective generic equivalents available and if the generic equivalents are the least expensive.

It is the intent of the Legislature that the pharmacists providers be reimbursed for the reasonable costs of filling and dispensing prescriptions for Medicaid beneficiaries.

The division may allow certain drugs, implantable drug system devices, and medical supplies, with limited distribution or limited access for beneficiaries and administered in an appropriate clinical setting, to be reimbursed as either a medical claim or pharmacy claim, as determined by the division.

Notwithstanding any other provision of this article, the division shall allow physician-administered drugs to be billed and reimbursed as either a medical claim or pharmacy point-of-sale to allow greater access to care.

It is the intent of the Legislature that the division and any managed care entity described in subsection (H) of this section encourage the use of Alpha-Hydroxyprogesterone Caproate (17P) to prevent recurrent preterm birth.

(10) Dental and orthodontic services to be determined by the division.

This dental services program under this paragraph shall be known as the “James Russell Dumas Medicaid Dental Services Program.”

The Medical Care Advisory Committee, assisted by the Division of Medicaid, shall annually determine the effect of this incentive by evaluating the number of dentists who are Medicaid providers, the number who and the degree to which they are actively billing Medicaid, the geographic trends of where dentists are offering what types of Medicaid services and other statistics pertinent to the goals of this legislative intent. This data shall annually be presented to the Chair of the Senate Medicaid Committee and the Chair of the House Medicaid Committee.

The division shall include dental services as a necessary component of overall health services provided to children who are eligible for services.

(11) Eyeglasses for all Medicaid beneficiaries who have (a) had surgery on the eyeball or ocular muscle that results in a vision change for which eyeglasses or a change in eyeglasses is medically indicated within six (6) months of the surgery and is in accordance with policies established by the division, or (b) one (1) pair every five (5) years and in accordance with policies established by the division. In either instance, the eyeglasses must be prescribed by a physician skilled in diseases of the eye or an optometrist, whichever the beneficiary may select.

(12) Intermediate care facility services.

(a) The division shall make full payment to all intermediate care facilities for individuals with intellectual disabilities for each day, not exceeding sixty-three (63) days per year, that a patient is absent from the facility on home leave. Payment may be made for the following home leave days in addition to the sixty-three-day limitation: Christmas, the day before Christmas, the day after Christmas, Thanksgiving, the day before Thanksgiving and the day after Thanksgiving.

(b) All state-owned intermediate care facilities for individuals with intellectual disabilities shall be reimbursed on a full reasonable cost basis.

(c) Effective January 1, 2015, the division shall update the fair rental reimbursement system for intermediate care facilities for individuals with intellectual disabilities.

(13) Family planning services, including drugs, supplies and devices, when those services are under the supervision of a physician or nurse practitioner.

(14) Clinic services. Such diagnostic, preventive, therapeutic, rehabilitative or palliative services furnished to an outpatient by or under the supervision of a physician or dentist in a facility that is not a part of a hospital but that is organized and operated to provide medical care to outpatients. Clinic services shall include any services reimbursed as outpatient hospital services that may be rendered in such a facility, including those that become so after July 1, 1991. On July 1, 1999, all fees for physicians' services reimbursed under authority of this paragraph (14) shall be reimbursed at ninety percent (90%) of the rate established on January 1, 1999, and as may be adjusted each July thereafter, under Medicare (Title XVIII of the federal Social Security Act, as amended). The division may develop and implement a different reimbursement model or schedule for physician's services provided by physicians based at an academic health care center and by physicians at rural health centers that are associated with an academic health care center. The division may provide for a reimbursement rate for physician's clinic services of up to one hundred percent (100%) of the rate established under Medicare for physician's services that are provided after the normal working hours of the physician, as determined in accordance with regulations of the division.

(15) Home- and community-based services for the elderly and disabled, as provided under Title XIX of the federal Social Security Act, as amended,

under waivers, subject to the availability of funds specifically appropriated for that purpose by the Legislature.

The Division of Medicaid is directed to apply for a waiver amendment to increase payments for all adult day care facilities based on acuity of individual patients, with a maximum of Seventy-five Dollars ($75.00) per day for the most acute patients.

(16) Mental health services. Certain services provided by a psychiatrist shall be reimbursed at up to one hundred percent (100%) of the Medicare rate. Approved therapeutic and case management services (a) provided by an approved regional mental health/intellectual disability center established under Sections 41-19-31 through 41-19-39, or by another community mental health service provider meeting the requirements of the Department of Mental Health to be an approved mental health/intellectual disability center if determined necessary by the Department of Mental Health, using state funds that are provided in the appropriation to the division to match federal funds, or (b) provided by a facility that is certified by the State Department of Mental Health to provide therapeutic and case management services, to be reimbursed on a fee for service basis, or (c) provided in the community by a facility or program operated by the Department of Mental Health. Any such services provided by a facility described in subparagraph (b) must have the prior approval of the division to be reimbursable under this section.

(17) Durable medical equipment services and medical supplies. Precertification of durable medical equipment and medical supplies must be obtained as required by the division. The Division of Medicaid may require durable medical equipment providers to obtain a surety bond in the amount and to the specifications as established by the Balanced Budget Act of 1997.

(18)(a) Notwithstanding any other provision of this section to the contrary, as provided in the Medicaid state plan amendment or amendments as defined in Section 43-13-145(10), the division shall make additional reimbursement to hospitals that serve a disproportionate share of low-income patients and that meet the federal requirements for those payments as provided in Section 1923 of the federal Social Security Act and any applicable regulations. It is the intent of the Legislature that the division shall draw down all available federal funds allotted to the state for disproportionate share hospitals. However, from and after January 1, 1999, public hospitals participating in the Medicaid disproportionate share program may be required to participate in an intergovernmental transfer program as provided in Section 1903 of the federal Social Security Act and any applicable regulations.

(b) The division may establish a Medicare Upper Payment Limits Program, as defined in Section 1902(a)(30) of the federal Social Security Act and any applicable federal regulations, for hospitals, and may establish a Medicare Upper Payment Limits Program for nursing facilities, and may establish a Medicare Upper Payment Limits Program for physicians employed or contracted by public hospitals. Upon successful implementation of a Medicare Upper Payment Limits Program for physicians employed by public hospitals, the division may develop a plan for implementing an Upper Payment Limits Program for physicians employed by other classes of hospitals. The division shall assess each hospital and, if the program is established for nursing facilities, shall assess each nursing facility, for the sole purpose of financing the state portion of the Medicare Upper Payment Limits Program. The hospital assessment shall be as provided in Section 43-13-145(4)(a) and the nursing facility assessment, if established, shall be based on Medicaid utilization or other appropriate method consistent with federal regulations. The assessment will remain in effect as long as the state participates in the Medicare Upper Payment Limits Program. Public hospitals with physicians participating in the Medicare Upper Payment Limits Program shall be required to participate in an intergovernmental transfer program for the purpose of financing the state portion of the physician UPL payments. As provided in the Medicaid state plan amendment or amendments as defined in Section 43-13-145(10), the division shall make additional reimbursement to hospitals and, if the program is established for nursing facilities, shall make additional reimbursement to nursing facilities, for the Medicare Upper Payment Limits, and, if the program is established for physicians, shall make additional reimbursement for physicians, as defined in Section 1902(a)(30) of the federal Social Security Act and any applicable federal regulations. Notwithstanding any other provision of this article to the contrary, effective upon implementation of the Mississippi Hospital Access Program (MHAP) provided in subparagraph (c)(i) below, the hospital portion of the inpatient Upper Payment Limits Program shall transition into and be replaced by the MHAP program. However, the division is authorized to develop and implement an alternative fee-for-service Upper Payment Limits model in accordance with federal laws and regulations if necessary to preserve supplemental funding. Further, the division, in consultation with the Mississippi Hospital Association and a governmental hospital located in a county bordering the Gulf of Mexico and the State of Alabama shall develop alternative models for distribution of medical claims and supplemental payments for inpatient and outpatient hospital services, and such models may include, but shall not be limited to the following: increasing rates for inpatient and outpatient services; creating a low-income utilization pool of funds to reimburse hospitals for the costs of uncompensated care, charity care and bad debts as permitted and approved pursuant to federal regulations and the Centers for Medicare and Medicaid Services; supplemental payments based upon Medicaid utilization, quality, service lines and/or costs of providing such services to Medicaid beneficiaries and to uninsured patients. The goals of such payment models shall be to ensure access to inpatient and outpatient care and to maximize any federal funds that are available to reimburse hospitals for services provided. Any such documents required to achieve the goals described in this paragraph shall be submitted to the Centers for Medicare and Medicaid Services, with a proposed effective date of July 1, 2019, to the extent possible, but in no event shall the effective date of such payment models be later than July 1, 2020. The Chairmen of the Senate and House Medicaid Committees shall be provided a copy of the proposed payment model(s) prior to submission. Effective July 1, 2018, and until such time as any payment model(s) as described above become effective, the division, in consultation with the Mississippi Hospital Association and a governmental hospital located in a county bordering the Gulf of Mexico and the State of Alabama is authorized to implement a transitional program for inpatient and outpatient payments and/or supplemental payments (including but not limited to MHAP and directed payments), to redistribute available supplemental funds among hospital providers, provided that when compared to a hospital's prior year supplemental payments, supplemental payments made pursuant to any such transitional program shall not result in a decrease of more than five percent (5%) and shall not increase by more than the amount needed to maximize the distribution of the available funds.

(c)(i) Not later than December 1, 2015, the division shall, subject to approval by the Centers for Medicare and Medicaid Services (CMS), establish, implement and operate a Mississippi Hospital Access Program (MHAP) for the purpose of protecting patient access to hospital care through hospital inpatient reimbursement programs provided in this section designed to maintain total hospital reimbursement for inpatient services rendered by in-state hospitals and the out-of-state hospital that is authorized by federal law to submit intergovernmental transfers (IGTs) to the State of Mississippi and is classified as Level I trauma center located in a county contiguous to the state line at the maximum levels permissible under applicable federal statutes and regulations, at which time the current inpatient Medicare Upper Payment Limits (UPL) Program for hospital inpatient services shall transition to the MHAP.

(ii) Subject only to approval by the Centers for Medicare and Medicaid Services (CMS) where required, the MHAP shall provide increased inpatient capitation (PMPM) payments to managed care entities contracting with the division pursuant to subsection (H) of this section to support availability of hospital services or such other payments permissible under federal law necessary to accomplish the intent of this subsection.

(iii) The intent of this subparagraph (c) is that effective for all inpatient hospital Medicaid services during state fiscal year 2016, and so long as this provision shall remain in effect hereafter, the division shall to the fullest extent feasible replace the additional reimbursement for hospital inpatient services under the inpatient Medicare Upper Payment Limits (UPL) Program with additional reimbursement under the MHAP and other payment programs for inpatient and/or outpatient payments which may be developed under the authority of this paragraph.

(iv) The division shall assess each hospital as provided in Section 43-13-145(4)(a) for the purpose of financing the state portion of the MHAP, supplemental payments and such other purposes as specified in Section 43-13-145. The assessment will remain in effect as long as the MHAP and supplemental payments are in effect.

(19)(a) Perinatal risk management services. The division shall promulgate regulations to be effective from and after October 1, 1988, to establish a comprehensive perinatal system for risk assessment of all pregnant and infant Medicaid recipients and for management, education and follow-up for those who are determined to be at risk. Services to be performed include case management, nutrition assessment/counseling, psychosocial assessment/counseling and health education. The division shall contract with the State Department of Health to provide the services within this paragraph (Perinatal High Risk Management/Infant Services System (PHRM/ISS)). The State Department of Health as the agency for PHRM/ISS for the Division of Medicaid shall be reimbursed on a full reasonable cost basis.

(b) Early intervention system services. The division shall cooperate with the State Department of Health, acting as lead agency, in the development and implementation of a statewide system of delivery of early intervention services, under Part C of the Individuals with Disabilities Education Act (IDEA). The State Department of Health shall certify annually in writing to the executive director of the division the dollar amount of state early intervention funds available that will be utilized as a certified match for Medicaid matching funds. Those funds then shall be used to provide expanded targeted case management services for Medicaid eligible children with special needs who are eligible for the state's early intervention system. Qualifications for persons providing service coordination shall be determined by the State Department of Health and the Division of Medicaid.

(20) Home- and community-based services for physically disabled approved services as allowed by a waiver from the United States Department of Health and Human Services for home- and community-based services for physically disabled people using state funds that are provided from the appropriation to the State Department of Rehabilitation Services and used to match federal funds under a cooperative agreement between the division and the department, provided that funds for these services are specifically appropriated to the Department of Rehabilitation Services.

(21) Nurse practitioner services. Services furnished by a registered nurse who is licensed and certified by the Mississippi Board of Nursing as a nurse practitioner, including, but not limited to, nurse anesthetists, nurse midwives, family nurse practitioners, family planning nurse practitioners, pediatric nurse practitioners, obstetrics-gynecology nurse practitioners and neonatal nurse practitioners, under regulations adopted by the division. Reimbursement for those services shall not exceed ninety percent (90%) of the reimbursement rate for comparable services rendered by a physician.

The division may provide for a reimbursement rate for nurse practitioner services of up to one hundred percent (100%) of the reimbursement rate for comparable services rendered by a physician for nurse practitioner services that are provided after the normal working hours of the nurse practitioner, as determined in accordance with regulations of the division.

(22) Ambulatory services delivered in federally qualified health centers, rural health centers and clinics of the local health departments of the State Department of Health for individuals eligible for Medicaid under this article based on reasonable costs as determined by the division. Federally qualified health centers shall be reimbursed by the Medicaid prospective payment system as approved by the Centers for Medicare and Medicaid Services.

(23) Inpatient psychiatric services. Inpatient psychiatric services to be determined by the division for recipients under age twenty-one (21) that are provided under the direction of a physician in an inpatient program in a licensed acute care psychiatric facility or in a licensed psychiatric residential treatment facility, before the recipient reaches age twenty-one (21) or, if the recipient was receiving the services immediately before he or she reached age twenty-one (21), before the earlier of the date he or she no longer requires the services or the date he or she reaches age twenty-two (22), as provided by federal regulations. From and after January 1, 2015, the division shall update the fair rental reimbursement system for psychiatric residential treatment facilities. Precertification of inpatient days and residential treatment days must be obtained as required by the division. From and after July 1, 2009, all state-owned and state-operated facilities that provide inpatient psychiatric services to persons under age twenty-one (21) who are eligible for Medicaid reimbursement shall be reimbursed for those services on a full reasonable cost basis.

(24) [Deleted]

(25) [Deleted]

(26) Hospice care. As used in this paragraph, the term “hospice care” means a coordinated program of active professional medical attention within the home and outpatient and inpatient care that treats the terminally ill patient and family as a unit, employing a medically directed interdisciplinary team. The program provides relief of severe pain or other physical symptoms and supportive care to meet the special needs arising out of physical, psychological, spiritual, social and economic stresses that are experienced during the final stages of illness and during dying and bereavement and meets the Medicare requirements for participation as a hospice as provided in federal regulations.

(27) Group health plan premiums and cost-sharing if it is cost-effective as defined by the United States Secretary of Health and Human Services.

(28) Other health insurance premiums that are cost-effective as defined by the United States Secretary of Health and Human Services. Medicare eligible must have Medicare Part B before other insurance premiums can be paid.

(29) The Division of Medicaid may apply for a waiver from the United States Department of Health and Human Services for home- and commu-

nity-based services for developmentally disabled people using state funds that are provided from the appropriation to the State Department of Mental Health and/or funds transferred to the department by a political subdivision or instrumentality of the state and used to match federal funds under a cooperative agreement between the division and the department, provided that funds for these services are specifically appropriated to the Department of Mental Health and/or transferred to the department by a political subdivision or instrumentality of the state.

(30) Pediatric skilled nursing services for eligible persons under twenty-one (21) years of age.

(31) Targeted case management services for children with special needs, under waivers from the United States Department of Health and Human Services, using state funds that are provided from the appropriation to the Mississippi Department of Human Services and used to match federal funds under a cooperative agreement between the division and the department.

(32) Care and services provided in Christian Science Sanatoria listed and certified by the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc., rendered in connection with treatment by prayer or spiritual means to the extent that those services are subject to reimbursement under Section 1903 of the federal Social Security Act.

(33) Podiatrist services.

(34) Assisted living services as provided through home- and community-based services under Title XIX of the federal Social Security Act, as amended, subject to the availability of funds specifically appropriated for that purpose by the Legislature.

(35) Services and activities authorized in Sections 43-27-101 and 43-27-103, using state funds that are provided from the appropriation to the Mississippi Department of Human Services and used to match federal funds under a cooperative agreement between the division and the department.

(36) Nonemergency transportation services for Medicaid-eligible persons, to be provided by the Division of Medicaid. The division may contract with additional entities to administer nonemergency transportation services as it deems necessary. All providers shall have a valid driver's license, valid vehicle license tags and a standard liability insurance policy covering the vehicle. The division may pay providers a flat fee based on mileage tiers, or in the alternative, may reimburse on actual miles traveled. The division may apply to the Center for Medicare and Medicaid Services (CMS) for a waiver to draw federal matching funds for nonemergency transportation services as a covered service instead of an administrative cost. The PEER Committee shall conduct a performance evaluation of the nonemergency transportation program to evaluate the administration of the program and the providers of transportation services to determine the most cost-effective ways of providing nonemergency transportation services to the patients served under the program. The performance evaluation shall be completed and provided to

the members of the Senate Medicaid Committee and the House Medicaid Committee not later than January 1, 2019, and every two (2) years thereafter.

(37) [Deleted]

(38) Chiropractic services. A chiropractor's manual manipulation of the spine to correct a subluxation, if x-ray demonstrates that a subluxation exists and if the subluxation has resulted in a neuromusculoskeletal condition for which manipulation is appropriate treatment, and related spinal x-rays performed to document these conditions. Reimbursement for chiropractic services shall not exceed Seven Hundred Dollars ($700.00) per year per beneficiary.

(39) Dually eligible Medicare/Medicaid beneficiaries. The division shall pay the Medicare deductible and coinsurance amounts for services available under Medicare, as determined by the division. From and after July 1, 2009, the division shall reimburse crossover claims for inpatient hospital services and crossover claims covered under Medicare Part B in the same manner that was in effect on January 1, 2008, unless specifically authorized by the Legislature to change this method.

(40) [Deleted]

(41) Services provided by the State Department of Rehabilitation Services for the care and rehabilitation of persons with spinal cord injuries or traumatic brain injuries, as allowed under waivers from the United States Department of Health and Human Services, using up to seventy-five percent (75%) of the funds that are appropriated to the Department of Rehabilitation Services from the Spinal Cord and Head Injury Trust Fund established under Section 37-33-261 and used to match federal funds under a cooperative agreement between the division and the department.

(42) [Deleted]

(43) The division shall provide reimbursement, according to a payment schedule developed by the division, for smoking cessation medications for pregnant women during their pregnancy and other Medicaid-eligible women who are of child-bearing age.

(44) Nursing facility services for the severely disabled.

(a) Severe disabilities include, but are not limited to, spinal cord injuries, closed-head injuries and ventilator-dependent patients.

(b) Those services must be provided in a long-term care nursing facility dedicated to the care and treatment of persons with severe disabilities.

(45) Physician assistant services. Services furnished by a physician assistant who is licensed by the State Board of Medical Licensure and is practicing with physician supervision under regulations adopted by the board, under regulations adopted by the division. Reimbursement for those services shall not exceed ninety percent (90%) of the reimbursement rate for comparable services rendered by a physician. The division may provide for a reimbursement rate for physician assistant services of up to one hundred percent (100%) or the reimbursement rate for comparable services rendered

by a physician for physician assistant services that are provided after the normal working hours of the physician assistant, as determined in accordance with regulations of the division.

(46) The division shall make application to the federal Centers for Medicare and Medicaid Services (CMS) for a waiver to develop and provide services for children with serious emotional disturbances as defined in Section 43-14-1(1), which may include home- and community-based services, case management services or managed care services through mental health providers certified by the Department of Mental Health. The division may implement and provide services under this waivered program only if funds for these services are specifically appropriated for this purpose by the Legislature, or if funds are voluntarily provided by affected agencies.

(47)(a) The division may develop and implement disease management programs for individuals with high-cost chronic diseases and conditions, including the use of grants, waivers, demonstrations or other projects as necessary.

(b) Participation in any disease management program implemented under this paragraph (47) is optional with the individual. An individual must affirmatively elect to participate in the disease management program in order to participate, and may elect to discontinue participation in the program at any time.

(48) Pediatric long-term acute care hospital services.

(a) Pediatric long-term acute care hospital services means services provided to eligible persons under twenty-one (21) years of age by a freestanding Medicare-certified hospital that has an average length of inpatient stay greater than twenty-five (25) days and that is primarily engaged in providing chronic or long-term medical care to persons under twenty-one (21) years of age.

(b) The services under this paragraph (48) shall be reimbursed as a separate category of hospital services.

(49) The division shall establish copayments and/or coinsurance for all Medicaid services for which copayments and/or coinsurance are allowable under federal law or regulation.

(50) Services provided by the State Department of Rehabilitation Services for the care and rehabilitation of persons who are deaf and blind, as allowed under waivers from the United States Department of Health and Human Services to provide home- and community-based services using state funds that are provided from the appropriation to the State Department of Rehabilitation Services or if funds are voluntarily provided by another agency.

(51) Upon determination of Medicaid eligibility and in association with annual redetermination of Medicaid eligibility, beneficiaries shall be encouraged to undertake a physical examination that will establish a base-line level of health and identification of a usual and customary source of care (a medical home) to aid utilization of disease management tools. This physical examination and utilization of these disease management tools shall be

consistent with current United States Preventive Services Task Force or other recognized authority recommendations.

For persons who are determined ineligible for Medicaid, the division will provide information and direction for accessing medical care and services in the area of their residence.

(52) Notwithstanding any provisions of this article, the division may pay enhanced reimbursement fees related to trauma care, as determined by the division in conjunction with the State Department of Health, using funds appropriated to the State Department of Health for trauma care and services and used to match federal funds under a cooperative agreement between the division and the State Department of Health. The division, in conjunction with the State Department of Health, may use grants, waivers, demonstrations, or other projects as necessary in the development and implementation of this reimbursement program.

(53) Targeted case management services for high-cost beneficiaries may be developed by the division for all services under this section.

(54) [Deleted]

(55) Therapy services. The plan of care for therapy services may be developed to cover a period of treatment for up to six (6) months, but in no event shall the plan of care exceed a six-month period of treatment. The projected period of treatment must be indicated on the initial plan of care and must be updated with each subsequent revised plan of care. Based on medical necessity, the division shall approve certification periods for less than or up to six (6) months, but in no event shall the certification period exceed the period of treatment indicated on the plan of care. The appeal process for any reduction in therapy services shall be consistent with the appeal process in federal regulations.

(56) Prescribed pediatric extended care centers services for medically dependent or technologically dependent children with complex medical conditions that require continual care as prescribed by the child's attending physician, as determined by the division.

(57) No Medicaid benefit shall restrict coverage for medically appropriate treatment prescribed by a physician and agreed to by a fully informed individual, or if the individual lacks legal capacity to consent by a person who has legal authority to consent on his or her behalf, based on an individual's diagnosis with a terminal condition. As used in this paragraph (57), "terminal condition" means any aggressive malignancy, chronic end-stage cardiovascular or cerebral vascular disease, or any other disease, illness or condition which a physician diagnoses as terminal.

(58) Treatment services for persons with opioid dependency or other highly addictive substance use disorders. The division is authorized to reimburse eligible providers for treatment of opioid dependency and other highly addictive substance use disorders, as determined by the division. Treatment related to these conditions shall not count against any physician visit limit imposed under this section.

(59) The division shall allow beneficiaries between the ages of ten (10) and eighteen (18) years to receive vaccines through a pharmacy venue.

(B) Notwithstanding any other provision of this article to the contrary, the division shall reduce the rate of reimbursement to providers for any service provided under this section by five percent (5%) of the allowed amount for that service. However, the reduction in the reimbursement rates required by this subsection (B) shall not apply to inpatient hospital services, outpatient hospital services, nursing facility services, intermediate care facility services, psychiatric residential treatment facility services, pharmacy services provided under subsection (A)(9) of this section, or any service provided by the University of Mississippi Medical Center or a state agency, a state facility or a public agency that either provides its own state match through intergovernmental transfer or certification of funds to the division, or a service for which the federal government sets the reimbursement methodology and rate. From and after January 1, 2010, the reduction in the reimbursement rates required by this subsection (B) shall not apply to physicians' services. In addition, the reduction in the reimbursement rates required by this subsection (B) shall not apply to case management services and home-delivered meals provided under the home- and community-based services program for the elderly and disabled by a planning and development district (PDD). Planning and development districts participating in the home- and community-based services program for the elderly and disabled as case management providers shall be reimbursed for case management services at the maximum rate approved by the Centers for Medicare and Medicaid Services (CMS). The Medical Care Advisory Committee established in Section 43-13-107(3)(a) shall develop a study and advise the division with respect to (1) determining the effect of any across-the-board five percent (5%) reduction in the rate of reimbursement to providers authorized under this subsection (B), and (2) comparing provider reimbursement rates to those applicable in other states in order to establish a fair and equitable provider reimbursement structure that encourages participation in the Medicaid program, and (3) comparing dental and orthodontic services reimbursement rates to those applicable in other states in fee-for-service and in managed care programs in order to establish a fair and equitable dental provider reimbursement structure that encourages participation in the Medicaid program, and (4) make a report thereon with any legislative recommendations to the Chairmen of the Senate and House Medicaid Committees prior to January 1, 2019.

(C) The division may pay to those providers who participate in and accept patient referrals from the division's emergency room redirection program a percentage, as determined by the division, of savings achieved according to the performance measures and reduction of costs required of that program. Federally qualified health centers may participate in the emergency room redirection program, and the division may pay those centers a percentage of any savings to the Medicaid program achieved by the centers' accepting patient referrals through the program, as provided in this subsection (C).

(D) [Deleted]

(E) Notwithstanding any provision of this article, no new groups or categories of recipients and new types of care and services may be added without enabling legislation from the Mississippi Legislature, except that the division may authorize those changes without enabling legislation when the addition of recipients or services is ordered by a court of proper authority.

(F) The executive director shall keep the Governor advised on a timely basis of the funds available for expenditure and the projected expenditures. Notwithstanding any other provisions of this article, if current or projected expenditures of the division are reasonably anticipated to exceed the amount of funds appropriated to the division for any fiscal year, the Governor, after consultation with the executive director, shall take all appropriate measures to reduce costs, which may include, but are not limited to:

(1) Reducing or discontinuing any or all services that are deemed to be optional under Title XIX of the Social Security Act;

(2) Reducing reimbursement rates for any or all service types;

(3) Imposing additional assessments on health care providers; or

(4) Any additional cost-containment measures deemed appropriate by the Governor.

Beginning in fiscal year 2010 and in fiscal years thereafter, when Medicaid expenditures are projected to exceed funds available for the fiscal year, the division shall submit the expected shortfall information to the PEER Committee not later than December 1 of the year in which the shortfall is projected to occur. PEER shall review the computations of the division and report its findings to the Legislative Budget Office not later than January 7 in any year.

(G) Notwithstanding any other provision of this article, it shall be the duty of each provider participating in the Medicaid program to keep and maintain books, documents and other records as prescribed by the Division of Medicaid in substantiation of its cost reports for a period of three (3) years after the date of submission to the Division of Medicaid of an original cost report, or three (3) years after the date of submission to the Division of Medicaid of an amended cost report.

(H)(1) Notwithstanding any other provision of this article, the division is authorized to implement (a) a managed care program, (b) a coordinated care program, (c) a coordinated care organization program, (d) a health maintenance organization program, (e) a patient-centered medical home program, (f) an accountable care organization program, (g) provider-sponsored health plan, or (h) any combination of the above programs. Managed care programs, coordinated care programs, coordinated care organization programs, health maintenance organization programs, patient-centered medical home programs, accountable care organization programs, provider-sponsored health plans, or any combination of the above programs or other similar programs implemented by the division under this section shall be limited to the greater of (i) forty-five percent (45%) of the total enrollment of Medicaid beneficiaries, or (ii) the categories of beneficiaries participating in the program as of January 1, 2014, plus the categories of beneficiaries composed primarily of persons younger than nineteen (19) years of age, and the division is authorized to enroll categories of beneficiaries in such program(s) as long as the appropriate limitations are not exceeded in the aggregate. As a condition for the approval of any program under this subsection (H)(1), the division shall require that no program may:

(a) Pay providers at a rate that is less than the Medicaid All Patient Refined Diagnosis Related Groups (APR-DRG) reimbursement rate;

(b) Override the medical decisions of hospital physicians or staff regarding patients admitted to a hospital for an emergency medical condition as defined by 42 US Code Section 1395dd. This restriction (b) does not prohibit the retrospective review of the appropriateness of the determination that an emergency medical condition exists by chart review or coding algorithm, nor does it prohibit prior authorization for nonemergency hospital admissions;

(c) Pay providers at a rate that is less than the normal Medicaid reimbursement rate. It is the intent of the Legislature that all managed care entities described in this subsection (H), in collaboration with the division, develop and implement innovative payment models that incentivize improvements in health care quality, outcomes, or value, as determined by the division. Participation in the provider network of any managed care, coordinated care, provider-sponsored health plan, or similar contractor shall not be conditioned on the provider's agreement to accept such alternative payment models;

(d) Implement a prior authorization program for prescription drugs that is more stringent than the prior authorization processes used by the division in its administration of the Medicaid program;

(e) [Deleted]

(f) Implement a preferred drug list that is more stringent than the mandatory preferred drug list established by the division under subsection (A)(9) of this section;

(g) Implement a policy which denies beneficiaries with hemophilia access to the federally funded hemophilia treatment centers as part of the Medicaid Managed Care network of providers. All Medicaid beneficiaries with hemophilia shall receive unrestricted access to anti-hemophilia factor products through noncapitated reimbursement programs.

(2) Notwithstanding any provision of this section, no expansion of Medicaid managed care program contracts may be implemented by the division without enabling legislation from the Mississippi Legislature. There is hereby established the Commission on Expanding Medicaid Managed Care to develop a recommendation to the Legislature and the Division of Medicaid relative to authorizing the division to expand Medicaid managed care contracts to include additional categories of Medicaid-eligible beneficiaries, and to study the feasibility of developing an alternative managed care payment model for medically complex children.

(a) The members of the commission shall be as follows:

(i) The Chairmen of the Senate Medicaid Committee and the Senate Appropriations Committee and a member of the Senate appointed by the Lieutenant Governor;

(ii) The Chairmen of the House Medicaid Committee and the House

Appropriations Committee and a member of the House of Representatives appointed by the Speaker of the House;

(iii) The Executive Director of the Division of Medicaid, Office of the Governor;

(iv) The Commissioner of the Mississippi Department of Insurance;

(v) A representative of a hospital that operates in Mississippi, appointed by the Speaker of the House;

(vi) A licensed physician appointed by the Lieutenant Governor;

(vii) A licensed pharmacist appointed by the Governor;

(viii) A licensed mental health professional or alcohol and drug counselor appointed by the Governor;

(ix) The Executive Director of the Mississippi State Medical Association (MSMA);

(x) Representatives of each of the current managed care organizations operated in the state appointed by the Governor; and

(xi) A representative of the long-term care industry appointed by the Governor.

(b) The commission shall meet within forty-five (45) days of the effective date of this section, upon the call of the Governor, and shall evaluate the Medicaid managed care program. Specifically the commission shall:

(i) Review the program's financial metrics;

(ii) Review the program's product offerings;

(iii) Review the program's impact on insurance premiums for individuals and small businesses;

(iv) Make recommendations for future managed care program modifications;

(v) Determine whether the expansion of the Medicaid managed care program may endanger the access to care by vulnerable patients;

(vi) Review the financial feasibility and health outcomes of populations health management as specifically provided in paragraph (2) above;

(vii) Make recommendations regarding a pilot program to evaluate an alternative managed care payment model for medically complex children;

(viii) The commission may request the assistance of the PEER Committee in making its evaluation; and

(ix) The commission shall solicit information from any person or entity the commission deems relevant to its study.

(c) The members of the commission shall elect a chair from among the members. The commission shall develop and report its findings and any recommendations for proposed legislation to the Governor and the Legislature on or before December 1, 2018. A quorum of the membership shall be required to approve any final report and recommendation. Members of the commission shall be reimbursed for necessary travel expense in the same manner as public employees are reimbursed for official duties and members of the Legislature shall be reimbursed in the same manner as for attending out-of-session committee meetings.

(d) Upon making its report, the commission shall be dissolved.

(3) Any contractors providing direct patient care under a managed care program established in this section shall provide to the Legislature and the division statistical data to be shared with provider groups in order to improve patient access, appropriate utilization, cost savings and health outcomes not later than October 1 of each year. The division and the contractors participating in the managed care program, a coordinated care program or a provider-sponsored health plan shall be subject to annual program audits performed by the Office of the State Auditor, the PEER Committee and/or an independent third party that has no existing contractual relationship with the division. Those audits shall determine among other items, the financial benefit to the State of Mississippi of the managed care program, the difference between the premiums paid to the managed care contractors and the payments made by those contractors to health care providers, compliance with performance measures required under the contracts, and whether costs have been contained due to improved health care outcomes. In addition, the audit shall review the most common claim denial codes to determine the reasons for the denials. This audit report shall be considered a public document and shall be posted in its entirety on the division's website.

(4) All health maintenance organizations, coordinated care organizations, provider-sponsored health plans, or other organizations paid for services on a capitated basis by the division under any managed care program or coordinated care program implemented by the division under this section shall reimburse all providers in those organizations at rates no lower than those provided under this section for beneficiaries who are not participating in those programs.

(5) No health maintenance organization, coordinated care organization, provider-sponsored health plan, or other organization paid for services on a capitated basis by the division under any managed care program or coordinated care program implemented by the division under this section shall require its providers or beneficiaries to use any pharmacy that ships, mails or delivers prescription drugs or legend drugs or devices.

(6) No health maintenance organization, coordinated care organization, provider-sponsored health plan, or other organization paid for services on a capitated basis by the division under any managed care program or coordinated care program implemented by the division under this section shall require its providers to be credentialed by the organization in order to receive reimbursement from the organization, but those organizations shall recognize the credentialing of the providers by the division.

(I) [Deleted]

(J) There shall be no cuts in inpatient and outpatient hospital payments, or allowable days or volumes, as long as the hospital assessment provided in Section 43-13-145 is in effect. This subsection (J) shall not apply to decreases in payments that are a result of: reduced hospital admissions, audits or payments under the APR-DRG or APC models, or a managed care program or similar model described in subsection (H) of this section.

(K) This section shall stand repealed on July 1, 2021.

**HISTORY: Codes, 1942, § 7290-39; Laws, 1969, Ex Sess, ch. 37, § 9; Laws, 1972, ch. 319, § 1; Laws, 1973, ch. 312, § 2; Laws, 1978, ch. 489, § 2; Laws, 1980, ch. 504; Laws, 1980, ch. 508, § 5; Laws, 1981, ch. 355, § 1; Laws, 1982, ch. 471; Laws, 1984, ch. 488, § 48; Laws, 1985, ch. 471; Laws, 1986, ch. 437, § 3; Laws, 1987, ch. 513, § 2; Laws, 1988, ch. 390; Laws, 1988, ch. 513; Laws, 1989, ch. 527, § 5; Laws, 1990, ch. 548, § 2; Laws, 1991, ch. 579, § 2; Laws, 1992, ch. 487, § 2; Laws, 1993, ch. 388, § 5; Laws, 1993, ch. 609, § 3; Laws, 1994, ch. 649, § 2; Laws, 1995, ch. 614, § 2; Laws, 1996, ch. 518, § 1; Laws, 1997, ch. 380, § 1; Laws, 1997, ch. 587, § 6; Laws, 1998, ch. 377, § 1; Laws, 1999, ch. 467, § 1; Laws, 1999, ch. 477, § 2; Laws, 1999, ch. 495, § 1; Laws, 1999, ch. 593, § 1; Laws, 2000, ch. 301, § 8; Laws, 2000, ch. 328, § 1; Laws, 2000, ch. 571, § 1; Laws, 2001, ch. 305, § 1; Laws, 2001, ch. 385, § 1; Laws, 2001, ch. 453, § 1; Laws, 2001, ch. 594, § 2; Laws, 2002, ch. 304, § 1; Laws, 2002, ch. 454, § 1; Laws, 2002, ch. 636B, § 1; Laws, 2003, ch. 543, § 3; Laws, 2004, ch. 593, § 3; Laws, 2005, ch. 470, § 2; Laws, 2007, ch. 552, § 4; Laws, 2007, ch. 553, § 2; Laws, 2008, ch. 360, § 2; Laws, 2009, 2nd Ex Sess, ch. 118, § 2; Laws, 2010, ch. 476, § 71; Laws, 2012, ch. 524, § 13; Laws, 2012, ch. 530, § 2; Laws, 2013, 2nd Ex Sess, ch. 1, § 2; Laws, 2014, ch. 488, § 1; Laws, 2015, ch. 483, § 1, eff from and after passage (approved Apr. 22, 2015); Laws, 2018, ch. 440, § 1, eff from and after July 1, 2018.**

**Amendment Notes** — The 2018 amendment rewrote the section to extend the date of the repealer for the section, to eliminate the annual limits on physician visits, home health services visits and monthly prescriptions, to delete the restriction on reimbursement rate for emergency medical transportation services, to authorize or revise reimbursement to obstetricians and gynecologists, federally qualified health centers, certain rural hospitals for certain services, authorize or revise reimbursement of physician-administered drugs, treatment for opioid dependency and other highly addictive substance use disorders, to provide that coverage of dental and orthodontic services be determined by the Division, to revise certain provisions of the Medicare Upper Payment Limits Program and the Mississippi Hospital Access Program, to allow children between ten and eighteen to receive vaccines through a pharmacy, to exempt outpatient hospital services from the 5% reduction in provider reimbursement rate, to revise the way the Division may make certain changes to authorized services and the actions the Division may take to reduce costs under certain circumstances, and to subject the Division and certain participating contractors to annual program audits.

## JUDICIAL DECISIONS

### 1. In general.

Mississippi Division of Medicaid (DOM) properly adjusted a nursing facility for the severely disabled's new-bed-value because (1) DOM considered the cost of building a new facility today, (2) DOM's only departure from prior practices was well-reasoned, and (3) DOM did not fail to apply a general rule. Methodist Specialty Care Ctr. v. Miss. Div. of Medicaid, — So. 3d —, 2020 Miss. LEXIS 234 (Miss. May 28, 2020).

Mississippi Division of Medicaid (DOM) did not act beyond DOM's authority in proposing changes to a nursing facility for the severely disabled's new-bed-value because (1) DOM's legislative report showed DOM had no intent to implement recommended changes absent legislative approval, and (2) the legislature authorized

DOM to update the fair-rental-reimbursement system without restriction. Methodist Specialty Care Ctr. v. Miss. Div. of Medicaid, — So. 3d —, 2020 Miss. LEXIS 234 (Miss. May 28, 2020).

Chancellor properly affirmed the findings of the Division of Medicaid (DOM) that its methodology for the distribution of upper payment limit (UPL) and Disproportionate Share Hospital (DSH) funds to hospitals comported with state law because DOM complied with the dictates of the statute, federal law, and its own State Plan, and it exhausted the maximum available DSH and UPL funds, per the directive of the Legislature; whether UPL or DSH had to be paid first was decided by the Legislature. Mem'l Hosp. at Gulfport v. Dzielak, 250 So. 3d 397, 2018 Miss. LEXIS 313 (Miss. 2018).

## § 43-13-117.4. Payment by Division of Medicaid of costs of care and services rendered by an entity that performs nontherapeutic abortions or maintains or operates or is affiliated with an entity that maintains or operates a facility where nontherapeutic abortions are performed prohibited.

Notwithstanding any other provision of Section 43-13-117, the division shall not authorize payment of part or all of the costs of care and services rendered by any entity that performs nontherapeutic abortions, maintains or operates a facility where nontherapeutic abortions are performed, or is affiliated with such an entity. For purposes of this provision, “nontherapeutic abortions” means abortions that are not qualified for federal matching funds under the Medicaid program, 42 USC Section 1396 et seq., and as amended hereafter, and “affiliated with” means having a legal relationship with another entity created or governed by one or more written instruments that demonstrates common control, ownership, franchisee status or management, or that grants a license or other authority to utilize the other entity's brand name, trademark, service mark or other registered identification mark.

**HISTORY: Laws, 2016, ch. 469, § 1, eff from and after July 1, 2016.**

**Editor's Notes** — In *Planned Parenthood Southeast v. Dzielak,* 2016 U.S. Dist. LEXIS 148015 (Oct. 20, 2016), the U.S. District Court for the Southern District of Mississippi, citing the U.S. Fifth Circuit Court's decision in *Planned Parenthood of Gulf Coast, Inc. v. Gee,* 2016 U.S. App. LEXIS 16844 (Sept. 14, 2016), granted the plaintiffs' motion for a declaratory judgment finding § 43-13-117.4, Mississippi Code of 1972, void, and permanently enjoined the defendant from enforcing, threatening to enforce or otherwise applying the provisions of § 43-13-117.4.

## § 43-13-117.5. Reimbursement for services provided eligible beneficiaries by licensed freestanding psychiatric hospital authorized.

The Division of Medicaid is authorized to reimburse for services provided to eligible Medicaid beneficiaries by a licensed freestanding psychiatric hospital in a method and manner to be determined by the division in accordance with federal law and federal regulations. The division may seek any necessary waivers, make any required amendments to its State Plan, or revise any contracts authorized under Section 43-13-117(H) as necessary to provide the services authorized under this section. As used in this section, the term "psychiatric hospital" shall have the meaning as defined in Section 41-7-173(h)(ii), which is an institution that is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of persons with mental illness. It is the intent of the Legislature that the cost of providing services to individuals in a psychiatric hospital shall not exceed the cost of providing the same services to individuals in a hospital as defined by Section 41-7-173(h)(i).

**HISTORY: Laws, 2019, ch. 426, § 1, eff from and after passage (approved March 28, 2019).**

## § 43-13-119. Repealed.

Repealed by its own terms, effective July 1, 2016.

§ 43-13-119. [Laws, 2006, ch. 303, § 1; Laws, 2007, ch. 412, § 1; Laws, 2008, ch. 422, § 1; Laws, 2010, ch. 498, § 3; Laws, 2013, 2nd Ex Sess, ch. 1, § 3; Laws, 2014, ch. 488, § 2, eff from and after July 1, 2014.]

**Editor's Notes** — Former § 43-13-119 [Laws, 2006, ch. 303, § 1; Laws, 2007, ch. 412, § 1; Laws, 2008, ch. 422, § 1; Laws, 2010, ch. 498, § 3; Laws, 2013, 2nd Ex Sess, ch. 1, § 3; Laws, 2014, ch. 488, § 2, eff from and after July 1, 2014; Repealed by its own terms effective July 1, 2016] required the Division of Medicaid to design and implement a temporary program to provide nonemergency transportation to locations for dialysis services for certain persons.

A former § 43-13-119 [Codes, 1942, § 7290-40; Laws, 1969, Ex Sess, ch. 37, § 10], which gave Medicaid recipients the absolute right to choose and select any legally qualified supplier of drugs, services and care without restriction, was repealed by Laws of 1993, ch. 609, § 4, effective from and after passage (approved April 20, 1993).

## § 43-13-121. Authority to administer article.

(1) The division shall administer the Medicaid program under the provisions of this article, and may do the following:

(a) Adopt and promulgate reasonable rules, regulations and standards, with approval of the Governor, and in accordance with the Administrative Procedures Law, Section 25-43-1.101 et seq.:

(i) Establishing methods and procedures as may be necessary for the proper and efficient administration of this article;

(ii) Providing Medicaid to all qualified recipients under the provisions of this article as the division may determine and within the limits of appropriated funds;

(iii) Establishing reasonable fees, charges and rates for medical services and drugs; in doing so, the division shall fix all of those fees, charges and rates at the minimum levels absolutely necessary to provide the medical assistance authorized by this article, and shall not change any of those fees, charges or rates except as may be authorized in Section 43-13-117;

(iv) Providing for fair and impartial hearings;

(v) Providing safeguards for preserving the confidentiality of records; and

(vi) For detecting and processing fraudulent practices and abuses of the program;

(b) Receive and expend state, federal and other funds in accordance with court judgments or settlements and agreements between the State of Mississippi and the federal government, the rules and regulations promulgated by the division, with the approval of the Governor, and within the limitations and restrictions of this article and within the limits of funds available for that purpose;

(c) Subject to the limits imposed by this article, to submit a Medicaid plan to the United States Department of Health and Human Services for approval under the provisions of the federal Social Security Act, to act for the state in making negotiations relative to the submission and approval of that plan, to make such arrangements, not inconsistent with the law, as may be required by or under federal law to obtain and retain that approval and to secure for the state the benefits of the provisions of that law.

No agreements, specifically including the general plan for the operation of the Medicaid program in this state, shall be made by and between the division and the United States Department of Health and Human Services unless the Attorney General of the State of Mississippi has reviewed the agreements, specifically including the operational plan, and has certified in writing to the Governor and to the executive director of the division that the agreements, including the plan of operation, have been drawn strictly in accordance with the terms and requirements of this article;

(d) In accordance with the purposes and intent of this article and in compliance with its provisions, provide for aged persons otherwise eligible for the benefits provided under Title XVIII of the federal Social Security Act by expenditure of funds available for those purposes;

(e) To make reports to the United States Department of Health and Human Services as from time to time may be required by that federal department and to the Mississippi Legislature as provided in this section;

(f) Define and determine the scope, duration and amount of Medicaid that may be provided in accordance with this article and establish priorities therefor in conformity with this article;

(g) Cooperate and contract with other state agencies for the purpose of coordinating Medicaid provided under this article and eliminating duplication and inefficiency in the Medicaid program;

(h) Adopt and use an official seal of the division;

(i) Sue in its own name on behalf of the State of Mississippi and employ legal counsel on a contingency basis with the approval of the Attorney General;

(j) To recover any and all payments incorrectly made by the division to a recipient or provider from the recipient or provider receiving the payments.

The division shall be authorized to collect any overpayments to providers sixty (60) days after the conclusion of any administrative appeal unless the matter is appealed to a court of proper jurisdiction and bond is posted. Any appeal filed after July 1, 2015, shall be to the Chancery Court of the First Judicial District of Hinds County, Mississippi, within sixty (60) days after the date that the division has notified the provider by certified mail sent to the proper address of the provider on file with the division and the provider has signed for the certified mail notice, or sixty (60) days after the date of the final decision if the provider does not sign for the certified mail notice. To recover those payments, the division may use the following methods, in addition to any other methods available to the division:

(i) The division shall report to the Department of Revenue the name of any current or former Medicaid recipient who has received medical services rendered during a period of established Medicaid ineligibility and who has not reimbursed the division for the related medical service payment(s). The Department of Revenue shall withhold from the state tax refund of the individual, and pay to the division, the amount of the payment(s) for medical services rendered to the ineligible individual that have not been reimbursed to the division for the related medical service payment(s).

(ii) The division shall report to the Department of Revenue the name of any Medicaid provider to whom payments were incorrectly made that the division has not been able to recover by other methods available to the division. The Department of Revenue shall withhold from the state tax refund of the provider, and pay to the division, the amount of the payments that were incorrectly made to the provider that have not been recovered by other available methods;

(k) To recover any and all payments by the division fraudulently obtained by a recipient or provider. Additionally, if recovery of any payments fraudulently obtained by a recipient or provider is made in any court, then, upon motion of the Governor, the judge of the court may award twice the payments recovered as damages;

(*l*) Have full, complete and plenary power and authority to conduct such investigations as it may deem necessary and requisite of alleged or suspected violations or abuses of the provisions of this article or of the regulations adopted under this article, including, but not limited to, fraudulent or unlawful act or deed by applicants for Medicaid or other benefits, or payments made to any person, firm or corporation under the terms, conditions and authority of this article, to suspend or disqualify any provider of services, applicant or recipient for gross abuse, fraudulent or unlawful acts for such periods, including permanently, and under such conditions as the division deems proper and just, including the imposition of a legal rate of interest on the amount improperly or incorrectly paid. Recipients who are found to have misused or abused Medicaid benefits may be locked into one (1) physician and/or one (1) pharmacy of the recipient's choice for a reasonable amount of time in order to educate and promote appropriate use of medical services, in accordance with federal regulations. If an administrative hearing becomes necessary, the division may, if the provider does not succeed in his or her defense, tax the costs of the administrative hearing, including the costs of the court reporter or stenographer and transcript, to the provider. The convictions of a recipient or a provider in a state or federal court for abuse, fraudulent or unlawful acts under this chapter shall constitute an automatic disqualification of the recipient or automatic disqualification of the provider from participation under the Medicaid program.

A conviction, for the purposes of this chapter, shall include a judgment entered on a plea of nolo contendere or a nonadjudicated guilty plea and shall have the same force as a judgment entered pursuant to a guilty plea or a conviction following trial. A certified copy of the judgment of the court of competent jurisdiction of the conviction shall constitute prima facie evidence of the conviction for disqualification purposes;

(m) Establish and provide such methods of administration as may be necessary for the proper and efficient operation of the Medicaid program, fully utilizing computer equipment as may be necessary to oversee and control all current expenditures for purposes of this article, and to closely monitor and supervise all recipient payments and vendors rendering services under this article. Notwithstanding any other provision of state law, the division is authorized to enter into a ten-year contract(s) with a vendor(s) to provide services described in this paragraph (m). Notwithstanding any provision of law to the contrary, the division is authorized to extend its Medicaid Management Information System, including all related components and services, and Decision Support System, including all related components and services, contracts in effect on June 30, 2020, for a period not to exceed two (2) years without complying with state procurement regulations;

(n) To cooperate and contract with the federal government for the purpose of providing Medicaid to Vietnamese and Cambodian refugees, under the provisions of Public Law 94-23 and Public Law 94-24, including any amendments to those laws, only to the extent that the Medicaid assistance and the administrative cost related thereto are one hundred percent (100%) reimbursable by the federal government. For the purposes of Section 43-13-117, persons receiving Medicaid under Public Law 94-23 and Public Law 94-24, including any amendments to those laws, shall not be considered a new group or category of recipient; and

(o) The division shall impose penalties upon Medicaid only, Title XIX participating long-term care facilities found to be in noncompliance with division and certification standards in accordance with federal and state regulations, including interest at the same rate calculated by the United States Department of Health and Human Services and/or the Centers for Medicare and Medicaid Services (CMS) under federal regulations.

(2) The division also shall exercise such additional powers and perform such other duties as may be conferred upon the division by act of the Legislature.

(3) The division, and the State Department of Health as the agency for licensure of health care facilities and certification and inspection for the Medicaid and/or Medicare programs, shall contract for or otherwise provide for the consolidation of on-site inspections of health care facilities that are necessitated by the respective programs and functions of the division and the department.

(4) The division and its hearing officers shall have power to preserve and enforce order during hearings; to issue subpoenas for, to administer oaths to and to compel the attendance and testimony of witnesses, or the production of books, papers, documents and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things conformable to law that may be necessary to enable them effectively to discharge the duties of their office. In compelling the attendance and testimony of witnesses, or the production of books, papers, documents and other evidence, or the taking of depositions, as authorized by this section, the division or its hearing officers may designate an individual employed by the division or some other suitable person to execute and return that process, whose action in executing and returning that process shall be as lawful as if done by the sheriff or some other proper officer authorized to execute and return process in the county where the witness may reside. In carrying out the investigatory powers under the provisions of this article, the executive director or other designated person or persons may examine, obtain, copy or reproduce the books, papers, documents, medical charts, prescriptions and other records relating to medical care and services furnished by the provider to a recipient or designated recipients of Medicaid services under investigation. In the absence of the voluntary submission of the books, papers, documents, medical charts, prescriptions and other records, the Governor, the executive director, or other designated person may issue and serve subpoenas instantly upon the provider, his or her agent, servant or employee for the production of the books, papers, documents, medical charts, prescriptions or other records during an audit or investigation of the provider. If any provider or his or her agent, servant or employee refuses to produce the records after being duly subpoenaed, the executive director may certify those facts and institute contempt proceedings in the manner, time and place as authorized by law for administrative proceedings. As an additional remedy, the division may recover all amounts paid to the provider covering the period of the audit or investigation, inclusive of a legal rate of interest and a reasonable attorney's fee and costs of court if suit becomes necessary. Division staff shall have immediate access to the provider's physical location, facilities, records, documents, books, and any other records relating to medical care and services rendered to recipients during regular business hours.

(5) If any person in proceedings before the division disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the hearing, or neglects to produce, after having been ordered to do so, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a

witness, or after having taken the oath refuses to be examined according to law, the executive director shall certify the facts to any court having jurisdiction in the place in which it is sitting, and the court shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and if the evidence so warrants, punish that person in the same manner and to the same extent as for a contempt committed before the court, or commit that person upon the same condition as if the doing of the forbidden act had occurred with reference to the process of, or in the presence of, the court.

(6) In suspending or terminating any provider from participation in the Medicaid program, the division shall preclude the provider from submitting claims for payment, either personally or through any clinic, group, corporation or other association to the division or its fiscal agents for any services or supplies provided under the Medicaid program except for those services or supplies provided before the suspension or termination. No clinic, group, corporation or other association that is a provider of services shall submit claims for payment to the division or its fiscal agents for any services or supplies provided by a person within that organization who has been suspended or terminated from participation in the Medicaid program except for those services or supplies provided before the suspension or termination. When this provision is violated by a provider of services that is a clinic, group, corporation or other association, the division may suspend or terminate that organization from participation. Suspension may be applied by the division to all known affiliates of a provider, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The violation, failure or inadequacy of performance may be imputed to a person with whom the provider is affiliated where that conduct was accomplished within the course of his or her official duty or was effectuated by him or her with the knowledge or approval of that person.

(7) The division may deny or revoke enrollment in the Medicaid program to a provider if any of the following are found to be applicable to the provider, his or her agent, a managing employee or any person having an ownership interest equal to five percent (5%) or greater in the provider:

(a) Failure to truthfully or fully disclose any and all information required, or the concealment of any and all information required, on a claim, a provider application or a provider agreement, or the making of a false or misleading statement to the division relative to the Medicaid program.

(b) Previous or current exclusion, suspension, termination from or the involuntary withdrawing from participation in the Medicaid program, any other state's Medicaid program, Medicare or any other public or private health or health insurance program. If the division ascertains that a provider has been convicted of a felony under federal or state law for an offense that the division determines is detrimental to the best interest of the program or of Medicaid beneficiaries, the division may refuse to enter into an agreement with that provider, or may terminate or refuse to renew an existing agreement.

(c) Conviction under federal or state law of a criminal offense relating to the delivery of any goods, services or supplies, including the performance of management or administrative services relating to the delivery of the goods, services or supplies, under the Medicaid program, any other state's Medicaid program, Medicare or any other public or private health or health insurance program.

(d) Conviction under federal or state law of a criminal offense relating to the neglect or abuse of a patient in connection with the delivery of any goods, services or supplies.

(e) Conviction under federal or state law of a criminal offense relating to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance.

(f) Conviction under federal or state law of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility or other financial misconduct.

(g) Conviction under federal or state law of a criminal offense punishable by imprisonment of a year or more that involves moral turpitude, or acts against the elderly, children or infirm.

(h) Conviction under federal or state law of a criminal offense in connection with the interference or obstruction of any investigation into any criminal offense listed in paragraphs (c) through (i) of this subsection.

(i) Sanction for a violation of federal or state laws or rules relative to the Medicaid program, any other state's Medicaid program, Medicare or any other public health care or health insurance program.

(j) Revocation of license or certification.

(k) Failure to pay recovery properly assessed or pursuant to an approved repayment schedule under the Medicaid program.

(*l*) Failure to meet any condition of enrollment.

**HISTORY: Codes, 1942, § 7290-41; Laws, 1969, Ex Sess, ch. 37, § 11; Laws, 1976, ch. 317, § 2; Laws, 1978, ch. 421, § 1; Laws, 1983, ch. 336 § 1; Laws, 1984, ch. 488, § 50; Laws, 1986, ch. 437, § 5; Laws, 1994, ch. 649, § 4; Laws, 1995, ch. 614, § 3; Laws, 2000, ch. 301, § 9; Laws, 2001, ch. 594, § 3; Laws, 2002, ch. 636B, § 2; Laws, 2004, ch. 593, § 4; Laws, 2012, ch. 530, § 3; Laws, 2014, ch. 488, § 3; Laws, 2015, ch. 321, § 1; Laws, 2015, ch. 473, § 2, eff from and after July 1, 2015; Laws, 2020, ch. 379, § 1, eff from and after passage (approved June 25, 2020).**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (1)(m) by substituting "System" for "Systems" so that "Medicaid Management Information Systems" reads "Medicaid Management Information System." The Joint Committee ratified the correction at its October 19, 2020, meeting.

**Amendment Notes —** The 2020 amendment, effective June 25, 2020, rewrote the last sentence of (1)(m), which read: "Notwithstanding any provision of law to the contrary, the division is authorized to extend its Medicaid Management Information Systems, including all related components and services, and Decision Support System, including all related components and services, contracts expiring on June 30, 2015, for a period not to exceed five (5) years without complying with the requirements provided in Section 25-9-120 and the Personal Service Contract Review Board procurement regulations."

### JUDICIAL DECISIONS

#### ANALYSIS

1. In general.
2. Exhaustion of remedies.

**1. In general.**

Although a hospice care provider was a limited liability company that was administratively dissolved, the provider's appeal of the Mississippi Division of Medicaid's decision to demand that unsupported claims be repaid was allowed to proceed because the provider, by further appealing the decision, was not maintaining an action against Medicaid, but rather, continued to defend itself against Medicaid's administrative decision. Genesis Hospice Care, LLC v. Miss. Div. of Medicaid, 267 So. 3d 779, 2019 Miss. LEXIS 160 (Miss. 2019).

Long-term skilled nursing facility was not entitled to a per diem reimbursement from the Mississippi Division of Medicaid (DOM) for respiratory-therapist expenses because the DOM had no statutory requirement to provide funding for the respiratory therapy. Although the DOM did allow a per diem reimbursement for respiratory therapists' salaries for certain categories of medical facilities, the nursing facility, which was classified as a large nursing facility was not entitled to claim respiratory-therapy expenses as part of its per diem calculation. CLC of Biloxi, LLC v. Miss. Div. of Medicaid, 238 So. 3d 16, 2018 Miss. App. LEXIS 73 (Miss. Ct. App. 2018).

**2. Exhaustion of remedies.**

Action filed by several facility care providers against the Mississippi Division of Medicaid challenging a rate freeze was properly dismissed for failure to exhaust administrative remedies as set out through a state plan and policy manual before resorting to a chancery court for relief. No exception to the exhaustion requirement applied because the agency's position was not clearly illegal, and the pursuit of an administrative remedy would not have resulted in irreparable harm. CLC of Biloxi, LLC v. Miss. Div. of Medicaid, 189 So. 3d 726, 2016 Miss. App. LEXIS 244 (Miss. Ct. App. 2016).

## § 43-13-125. Recovery of Medicaid payments from third parties; compromise or settlement of claims; plaintiff's recovery of medical expenses as special damages; disposition of funds received.

### JUDICIAL DECISIONS

**1. In general.**

Like Miss. Code Ann. § 71-3-71, Miss. Code Ann. § 43-13-125(2) unambiguously provides the method for distributing proceeds when an injured Medicaid recipient recovers from a third party. So like § 71-3-71, the clear directive of § 43-13-125(2) cannot be disregarded. Miss. Div. of Medicaid v. Pittman, 171 So. 3d 583, 2015 Miss. App. LEXIS 363 (Miss. Ct. App.), cert. dismissed, — So. 3d —, 2015 Miss. LEXIS 395 (Miss. 2015).

Chancellor erred in denying the subrogation rights of the Mississippi Division of Medicaid (Medicaid) where the made-whole rule only applied to an insurer's contractual right to subrogation, Medicaid's right to subrogation was statutory, Miss. Code Ann. § 43-13-125, rather than contractual, and the made-whole rule did not apply to statutory subrogation rights. Miss. Div. of Medicaid v. Pittman, 171 So. 3d 583, 2015 Miss. App. LEXIS 363 (Miss. Ct. App.), cert. dismissed, — So. 3d —, 2015 Miss. LEXIS 395 (Miss. 2015).

## § 43-13-145. Assessment levied upon health care facilities; keeping of records; collection of assessments; effect of delinquency in payment [Subsections (4) and (10) through (15) repealed effective July 1, 2024].

(1)(a) Upon each nursing facility licensed by the State of Mississippi, there is levied an assessment in an amount set by the division, equal to the maximum rate allowed by federal law or regulation, for each licensed and occupied bed of the facility.

(b) A nursing facility is exempt from the assessment levied under this subsection if the facility is operated under the direction and control of:

(i) The United States Veterans Administration or other agency or department of the United States government;

(ii) The State Veterans Affairs Board; or

(iii) The University of Mississippi Medical Center.

(2)(a) Upon each intermediate care facility for individuals with intellectual disabilities licensed by the State of Mississippi, there is levied an assessment in an amount set by the division, equal to the maximum rate allowed by federal law or regulation, for each licensed and occupied bed of the facility.

(b) An intermediate care facility for individuals with intellectual disabilities is exempt from the assessment levied under this subsection if the facility is operated under the direction and control of:

(i) The United States Veterans Administration or other agency or department of the United States government;

(ii) The State Veterans Affairs Board; or

(iii) The University of Mississippi Medical Center.

(3)(a) Upon each psychiatric residential treatment facility licensed by the State of Mississippi, there is levied an assessment in an amount set by the division, equal to the maximum rate allowed by federal law or regulation, for each licensed and occupied bed of the facility.

(b) A psychiatric residential treatment facility is exempt from the assessment levied under this subsection if the facility is operated under the direction and control of:

(i) The United States Veterans Administration or other agency or department of the United States government;

(ii) The University of Mississippi Medical Center; or

(iii) A state agency or a state facility that either provides its own state match through intergovernmental transfer or certification of funds to the division.

(4) Hospital assessment.

(a)(i) Subject to and upon fulfillment of the requirements and conditions of paragraph (f) below, and notwithstanding any other provisions of this section, effective for state fiscal years 2016 through fiscal year 2021, an annual assessment on each hospital licensed in the state is imposed on each non-Medicare hospital inpatient day as defined below at a rate that is determined by dividing the sum prescribed in this subparagraph (i), plus the nonfederal share necessary to maximize the Disproportionate Share Hospital (DSH) and Medicare Upper Payment Limits (UPL) Program payments and hospital access payments and such other supplemental payments as may be developed pursuant to Section 43-13-117(A)(18), by the total number of non-Medicare hospital inpatient days as defined below for all licensed Mississippi hospitals, except as provided in paragraph (d) below. If the state matching funds percentage for the Mississippi Medicaid program is sixteen percent (16%) or less, the sum used in the formula under this subparagraph (i) shall be Seventy-four Million Dollars ($74,000,000.00). If the state matching funds percentage for the Mississippi Medicaid program is twenty-four percent (24%) or higher, the sum used in the formula under this subparagraph (i) shall be One Hundred Four Million Dollars ($104,000,000.00). If the state matching funds percentage for the Mississippi Medicaid program is between sixteen percent (16%) and twenty-four percent (24%), the sum used in the formula under this subparagraph (i) shall be a pro rata amount determined as follows: the current state matching funds percentage rate minus sixteen percent (16%) divided by eight percent (8%) multiplied by Thirty Million Dollars ($30,000,000.00) and add that amount to Seventy-four Million Dollars ($74,000,000.00). However, no assessment in a quarter under this subparagraph (i) may exceed the assessment in the previous quarter by more than Three Million Seven Hundred Fifty Thousand Dollars ($3,750,000.00) (which would be Fifteen Million Dollars ($15,000,000.00) on an annualized basis). The division shall publish the state matching funds percentage rate applicable to the Mississippi Medicaid program on the tenth day of the first month of each quarter and the assessment determined under the formula prescribed above shall be applicable in the quarter following any adjustment in that state matching funds percentage rate. The division shall notify each hospital licensed in the state as to any projected increases or decreases in the assessment determined under this subparagraph (i). However, if the Centers for Medicare and Medicaid Services (CMS) does not approve the provision in Section 43-13-117(39) requiring the division to reimburse crossover claims for inpatient hospital services and crossover claims covered under Medicare Part B for dually eligible beneficiaries in the same manner that was in effect on January 1, 2008, the sum that otherwise would have been used in the formula under this subparagraph (i) shall be reduced by Seven Million Dollars ($7,000,000.00).

(ii) In addition to the assessment provided under subparagraph (i), effective for state fiscal years 2016 through fiscal year 2021, an additional annual assessment on each hospital licensed in the state is imposed on each non-Medicare hospital inpatient day as defined below at a rate that is determined by dividing twenty-five percent (25%) of any provider reductions in the Medicaid program as authorized in Section 43-13-117(F) for that fiscal year up to the following maximum amount, plus the nonfederal share necessary to maximize the Disproportionate Share Hospital (DSH) and inpatient Medicare Upper Payment Limits (UPL) Program payments and inpatient hospital access payments, by the total number of non-Medicare hospital inpatient days as defined below for all licensed Mississippi hospitals: in fiscal year 2010, the maximum amount shall be Twenty-four Million Dollars ($24,000,000.00); in fiscal year 2011, the maximum amount shall be Thirty-two Million Dollars ($32,000,000.00); and in fiscal year 2012 and thereafter, the maximum amount shall be Forty Million Dollars ($40,000,000.00). Any such deficit in the Medicaid program shall be reviewed by the PEER Committee as provided in Section 43-13-117(F).

(iii) In addition to the assessments provided in subparagraphs (i) and (ii), effective for state fiscal years 2016 through fiscal year 2021, an additional annual assessment on each hospital licensed in the state is imposed pursuant to the provisions of Section 43-13-117(F) if the cost containment measures described therein have been implemented and there are insufficient funds in the Health Care Trust Fund to reconcile any remaining deficit in any fiscal year. If the Governor institutes any other additional cost containment measures on any program or programs authorized under the Medicaid program pursuant to Section 43-13-117(F), hospitals shall be responsible for twenty-five percent (25%) of any such additional imposed provider cuts, which shall be in the form of an additional assessment not to exceed the twenty-five percent (25%) of provider expenditure reductions. Such additional assessment shall be imposed on each non-Medicare hospital inpatient day in the same manner as assessments are imposed under subparagraphs (i) and (ii).

(b) Payment and definitions.

(i) The hospital assessment as described in this subsection (4) shall be assessed and collected monthly no later than the fifteenth calendar day of each month; provided, however, that the first three (3) monthly payments shall be assessed but not be collected until collection is satisfied for the third monthly (September) payment and the second three (3) monthly payments shall be assessed but not be collected until collection is satisfied for the sixth monthly (December) payment and provided that the portion of the assessment related to the DSH payments shall be paid in three (3) one-third (⅓) installments due no later than the fifteenth calendar day of the payment month of the DSH payments required by Section 43-13-117(A)(18), which shall be paid during the second, third and fourth quarters of the state fiscal year, and provided that the assessment related to any UPL payment(s) shall be paid no later than the fifteenth calendar day of the payment month of the UPL payment(s) and provided assessments related to hospital access payments will be collected beginning the initial month that the division funds MHAP.

(ii) Definitions. For purposes of this subsection (4):

1. "Non-Medicare hospital inpatient day" means total hospital inpatient days including subcomponent days less Medicare inpatient

days including subcomponent days from the hospital's most recent Medicare cost report for the second calendar year preceding the beginning of the state fiscal year, on file with CMS per the CMS HCRIS database, or cost report submitted to the Division if the HCRIS database is not available to the division, as of June 1 of each year.

a. Total hospital inpatient days shall be the sum of Worksheet S-3, Part 1, column 8 row 14, column 8 row 16, and column 8 row 17, excluding column 8 rows 5 and 6.

b. Hospital Medicare inpatient days shall be the sum of Worksheet S-3, Part 1, column 6 row 14, column 6 row 16.00, and column 6 row 17, excluding column 6 rows 5 and 6.

c. Inpatient days shall not include residential treatment or long-term care days.

2. "Subcomponent inpatient day" means the number of days of care charged to a beneficiary for inpatient hospital rehabilitation and psychiatric care services in units of full days. A day begins at midnight and ends twenty-four (24) hours later. A part of a day, including the day of admission and day on which a patient returns from leave of absence, counts as a full day. However, the day of discharge, death, or a day on which a patient begins a leave of absence is not counted as a day unless discharge or death occur on the day of admission. If admission and discharge or death occur on the same day, the day is considered a day of admission and counts as one (1) subcomponent inpatient day.

(c) The assessment provided in this subsection is intended to satisfy and not be in addition to the assessment and intergovernmental transfers provided in Section 43-13-117(A)(18). Nothing in this section shall be construed to authorize any state agency, division or department, or county, municipality or other local governmental unit to license for revenue, levy or impose any other tax, fee or assessment upon hospitals in this state not authorized by a specific statute.

(d) Hospitals operated by the United States Department of Veterans Affairs and state-operated facilities that provide only inpatient and outpatient psychiatric services shall not be subject to the hospital assessment provided in this subsection.

(e) Multihospital systems, closure, merger, change of ownership and new hospitals.

(i) If a hospital conducts, operates or maintains more than one (1) hospital licensed by the State Department of Health, the provider shall pay the hospital assessment for each hospital separately.

(ii) Notwithstanding any other provision in this section, if a hospital subject to this assessment operates or conducts business only for a portion of a fiscal year, the assessment for the state fiscal year shall be adjusted by multiplying the assessment by a fraction, the numerator of which is the number of days in the year during which the hospital operates, and the denominator of which is three hundred sixty-five (365). Immediately upon ceasing to operate, the hospital shall pay the assessment for the year as so adjusted (to the extent not previously paid).

(iii) The division shall determine the tax for new hospitals and hospitals that undergo a change of ownership in accordance with this section, using the best available information, as determined by the division.

(f) Applicability.

The hospital assessment imposed by this subsection shall not take effect and/or shall cease to be imposed if:

(i) The assessment is determined to be an impermissible tax under Title XIX of the Social Security Act; or

(ii) CMS revokes its approval of the division's 2009 Medicaid State Plan Amendment for the methodology for DSH payments to hospitals under Section 43-13-117(A)(18).

This subsection (4) is repealed on July 1, 2024.

(5) Each health care facility that is subject to the provisions of this section shall keep and preserve such suitable books and records as may be necessary to determine the amount of assessment for which it is liable under this section. The books and records shall be kept and preserved for a period of not less than five (5) years, during which time those books and records shall be open for examination during business hours by the division, the Department of Revenue, the Office of the Attorney General and the State Department of Health.

(6) Except as provided in subsection (4) of this section, the assessment levied under this section shall be collected by the division each month.

(7) All assessments collected under this section shall be deposited in the Medical Care Fund created by Section 43-13-143.

(8) The assessment levied under this section shall be in addition to any other assessments, taxes or fees levied by law, and the assessment shall constitute a debt due the State of Mississippi from the time the assessment is due until it is paid.

(9)(a) If a health care facility that is liable for payment of an assessment levied by the division does not pay the assessment when it is due, the division shall give written notice to the health care facility by certified or registered mail demanding payment of the assessment within ten (10) days from the date of delivery of the notice. If the health care facility fails or refuses to pay the assessment after receiving the notice and demand from the division, the division shall withhold from any Medicaid reimbursement payments that are due to the health care facility the amount of the unpaid assessment and a penalty of ten percent (10%) of the amount of the assessment, plus the legal rate of interest until the assessment is paid in full. If the health care facility does not participate in the Medicaid program, the division shall turn over to the Office of the Attorney General the collection of the unpaid assessment by civil action. In any such civil action, the Office of the Attorney General shall collect the amount of the unpaid assessment and a penalty of ten percent (10%) of the amount of the assessment, plus the legal rate of interest until the assessment is paid in full.

(b) As an additional or alternative method for collecting unpaid assessments levied by the division, if a health care facility fails or refuses to pay the assessment after receiving notice and demand from the division, the division may file a notice of a tax lien with the chancery clerk of the county in which the health care facility is located, for the amount of the unpaid assessment and a penalty of ten percent (10%) of the amount of the assessment, plus the legal rate of interest until the assessment is paid in full. Immediately upon receipt of notice of the tax lien for the assessment, the chancery clerk shall forward the notice to the circuit clerk who shall enter the notice of the tax lien as a judgment upon the judgment roll and show in the appropriate columns the name of the health care facility as judgment debtor, the name of the division as judgment creditor, the amount of the unpaid assessment, and the date and time of enrollment. The judgment shall be valid as against mortgagees, pledgees, entrusters, purchasers, judgment creditors and other persons from the time of filing with the clerk. The amount of the judgment shall be a debt due the State of Mississippi and remain a lien upon the tangible property of the health care facility until the judgment is satisfied. The judgment shall be the equivalent of any enrolled judgment of a court of record and shall serve as authority for the issuance of writs of execution, writs of attachment or other remedial writs.

(10)(a) To further the provisions of Section 43-13-117(A)(18), the Division of Medicaid shall submit to the Centers for Medicare and Medicaid Services (CMS) any documents regarding the hospital assessment established under subsection (4) of this section. In addition to defining the assessment established in subsection (4) of this section if necessary, the documents shall describe any supplement payment programs and/or payment methodologies as authorized in Section 43-13-117(A)(18) if necessary.

(b) All hospitals satisfying the minimum federal DSH eligibility requirements (Section 1923(d) of the Social Security Act) may, subject to OBRA 1993 payment limitations, receive a DSH payments. This DSH payment shall expend the balance of the federal DSH allotment and associated state share not utilized in DSH payments to state-owned institutions for treatment of mental diseases. The payment to each hospital shall be calculated by applying a uniform percentage to the uninsured costs of each eligible hospital, excluding state-owned institutions for treatment of mental diseases; however, that percentage for a state-owned teaching hospital located in Hinds County shall be multiplied by a factor of two (2).

(11) The division shall implement DSH and supplemental payment calculation methodologies that result in the maximization of available federal funds.

(12) The DSH payments shall be paid on or before December 31, March 31, and June 30 of each fiscal year, in increments of one-third (⅓) of the total calculated DSH amounts. Supplemental payments developed pursuant to Section 43-13-117(A)(18) shall be paid monthly.

(13) The hospital assessment as described in subsection (4) above shall be assessed and collected monthly no later than the fifteenth calendar day of each month; provided, however, that the first three (3) monthly payments shall be

assessed but not be collected until collection is satisfied for the third monthly (September) payment and the second three (3) monthly payments shall be assessed but not be collected until collection is satisfied for the sixth monthly (December) payment and provided that the portion of the assessment related to the DSH payments shall be paid in three (3) one-third (⅓) installments due no later than the fifteenth calendar day of the payment month of the DSH payments required by Section 43-13-117(A)(18), which shall be paid during the second, third and fourth quarters of the state fiscal year, and provided that the assessment related to any supplemental payment programs developed pursuant to Section 43-13-117(A)(18) shall be paid no later than the fifteenth calendar day of the payment month of the payment(s).

(14) If for any reason any part of the plan for annual DSH and supplemental payment programs to hospitals provided under subsection (10) of this section and/or developed pursuant to Section 43-13-117(A)(18) is not approved by CMS, the remainder of the plan shall remain in full force and effect.

(15) Nothing in this section shall prevent the Division of Medicaid from facilitating participation in Medicaid supplemental hospital payment programs by a hospital located in a county contiguous to the State of Mississippi that is also authorized by federal law to submit intergovernmental transfers (IGTs) to the State of Mississippi to fund the state share of the hospital's supplemental and/or MHAP payments.

(16) Subsections (10) through (15) of this section shall stand repealed on July 1, 2024.

**HISTORY: Laws, 1992, ch. 487, § 7; Laws, 2002, ch. 636B, § 5; Laws, 2003, ch. 543, § 6; Laws, 2004, ch. 593, § 6; Laws, 2005, ch. 470, § 3; brought forward without change, Laws, 2008, ch. 360, § 3; Laws, 2009, 2nd Ex Sess, ch. 118, § 3; Laws, 2012, ch. 530, § 4; Laws, 2013, 2nd Ex Sess, ch. 1, § 4; Laws, 2014, ch. 488, § 5; Laws, 2015, ch. 483, § 2, eff from and after passage (approved Apr. 22, 2015); Laws, 2018, ch. 310, § 1, eff from and after July 1, 2018; Laws, 2018, ch. 440, § 2, eff from and after July 1, 2018.**

**Joint Legislative Committee Note** — Section 1 of Chapter 310, Laws of 2018, effective from and after July 1, 2018 (approved March 5, 2018), amended this section. Section 2 of Chapter 440, Laws of 2018, effective from and after July 1, 2018 (approved March 5, 2018), also amended this section. As set out above, this section reflects the language of Section 2 of Chapter 440, Laws of 2018, which contains language that specifically provides that it supersedes § 43-13-145 as amended by Chapter 310, Laws of 2018.

**Amendment Notes** — The first 2018 amendment (ch. 310) inserted "Program" following "Medicare Upper Payment Limits (UPL)" everywhere it appears; substituted "years 2016 through fiscal year 2021" for "year 2016, 2017 and fiscal year 2018" everywhere it appears; in (4), substituted "this subsection (4) shall" for "subsection (4) above shall" in (b)(i), and extended the date of the repealer for subsection (4) by substituting "July 1, 2021" for "July 1, 2018" in the last paragraph; and extended the repeal date for subsections (10) through (16) by substituting "July 1, 2021" for "July 1, 2018" in (17).

The second 2018 amendment (ch. 440), in (4), in the first sentence of (a)(i), deleted "inpatient" preceding "Medicare Upper Payment Limits" and preceding "hospital access payments" and inserted "and such other supplemental payments ... Section 43-13-

117(a)(18)," in (b)(i), deleted "inpatient" preceding "UPL payment(s)" and preceding "hospital access payments," in (b)(ii), rewrote 1., which read: "'Non-Medicare hospital inpatient day' means total hospital inpatient days including subcomponent days less Medicare inpatient days including subcomponent days from the hospital's 2013 Medicare cost report on file with CMS," in (e), inserted "change of ownership" in the first paragraph, and added (iii), and substituted "July 1, 2024" for "July 1, 2021" in the last paragraph; in (6), deleted "beginning on March 31, 2005" from the end; rewrote (10) by designating the former first paragraph of the subsection (a), deleting former (a) through (d), which provided additional annual UPL and DSH payments to certain privately owned and nonstate government operated hospitals, certain general acute care hospitals, and hospitals licensed within the class of certain private hospitals, and redesignating former (e) as (b), and in (b), substituting "may, subject to OBRA 1993" for "shall, subject to OBRA 1993," substituting "receive a DSH payment" for "receive an additional DSH payment" and deleting "additional" preceding "DSH payment shall expend"; deleted former (11), which read: "The portion of the hospital assessment provided in subsection (4) of this section associated with the MHAP shall not be in effect or implemented until the approval by CMS for the MHAP is obtained" and redesignated the remaining subsections accordingly; in (11), substituted "supplemental payment calculation" for "UPL calculation"; in (12), deleted "and inpatient UPL" twice following "DSH" and added the last sentence; in (13), substituted "supplemental payment programs developed pursuant to Section 43-13-117(A)(18)" for "inpatient UPL payments" and deleted "and provided assessments related to MHAP will be collected beginning the initial month that the division funds MHAP" from the end; rewrote (14), which read: "If for any reason any part of the plan for additional annual DSH and inpatient UPL payments to hospitals provided under subsection (10) of this section is not approved by CMS, the remainder of the plan shall remain in full force and effect"; and in (16), extended the date of the repealer for (10) through (15) by substituting "July 1, 2024" for "July 1, 2021."

### JUDICIAL DECISIONS

**1. Distributions.**

Chancellor properly affirmed the findings of the Division of Medicaid (DOM) that its methodology for the distribution of upper payment limit (UPL) and Disproportionate Share Hospital (DSH) funds to hospitals comported with state law because DOM complied with the dictates of the statute, federal law, and its own State Plan, and it exhausted the maximum available DSH and UPL funds, per the directive of the Legislature; whether UPL or DSH had to be paid first was decided by the Legislature. Mem'l Hosp. at Gulfport v. Dzielak, 250 So. 3d 397, 2018 Miss. LEXIS 313 (Miss. 2018).

## § 43-13-149. Repealed.

Repealed by its own terms, effective July 1, 2017.

§ 43-13-149. [Laws, 2015, ch. 473, § 4, eff from and after July 1, 2015.]

**Editor's Notes** — Former § 43-13-149 provided for the bonding and the registration with the Division of Medicaid of medicaid planners.

# ARTICLE 5.

# MEDICAID FRAUD CONTROL ACT.

## § 43-13-213. False or fraudulent claim.

### JUDICIAL DECISIONS

**2. Venue.**

Court of Appeals properly affirmed defendant's conviction and sentence for Medicaid fraud because the statutory venue provisions were limited to civil cases, defendant's trial was in the county "where the offense was committed," as provided by the state constitution, and Medicaid fraud was exempt from the two-year statute of limitations inasmuch as it was a species of or within the definition of "obtaining money or property under false pretenses or by fraud." Azomani v. State, 222 So. 3d 282, 2017 Miss. LEXIS 220 (Miss. 2017).

## § 43-13-215. Penalties.

### JUDICIAL DECISIONS

**ANALYSIS**

1. In general.
2. Sufficient evidence.

**1. In general.**

Court of Appeals properly affirmed defendant's conviction and sentence for Medicaid fraud because the statutory venue provisions were limited to civil cases, defendant's trial was in the county "where the offense was committed," as provided by the state constitution, and Medicaid fraud was exempt from the two-year statute of limitations inasmuch as it was a species of or within the definition of "obtaining money or property under false pretenses or by fraud." Azomani v. State, 222 So. 3d 282, 2017 Miss. LEXIS 220 (Miss. 2017).

**2. Sufficient evidence.**

Sufficient evidence supported defendant's Medicaid fraud convictions because a jury could have found defendant had no reasonable basis to believe defendant filed proper Medicaid claims under a code carrying the highest level of reimbursement. Azomani v. State, 222 So. 3d 343, 2016 Miss. App. LEXIS 510 (Miss. Ct. App. 2016), aff'd on other grounds, 222 So. 3d 282, 2017 Miss. LEXIS 220 (Miss. 2017).

## § 43-13-223. Jurisdiction; service of process.

### JUDICIAL DECISIONS

**1. Venue.**

In a Medicaid fraud prosecution, defendant's venue issue under Miss. Code Ann. § 43-13-223(1) failed because (1) defendant waived the issue by not pursuing a trial venue motion, and (2) the statute only applied to civil actions under the Medicaid Fraud Control Act. Azomani v. State, 222 So. 3d 343, 2016 Miss. App. LEXIS 510 (Miss. Ct. App. 2016), aff'd on other grounds, 222 So. 3d 282, 2017 Miss. LEXIS 220 (Miss. 2017).

## § 43-13-225. Civil liability and penalty of health care provider.

### JUDICIAL DECISIONS

**2. Applicability.**

When a pharmaceutical provider violated the Mississippi Consumer Protection Act (CPA) by reporting false drug prices to a third party knowing the State of Mississippi would rely on that information to calculate Medicaid reimbursements to pharmacies for those drugs, the State's claim under the Medicaid Fraud Control Act was dismissed because (1) the statute's civil liability provision did not provide for recovery beyond the amount a defendant improperly received, and (2) the provider received no payments directly from the State. Sandoz, Inc. v. State (In re Miss. Medicaid Pharm. Average Wholesale Price Litig.), 190 So. 3d 829, 2015 Miss. LEXIS 545 (Miss. 2015).

# ARTICLE 9.

# HEALTH CARE TRUST FUND FOR TOBACCO SETTLEMENT FUNDS.

Sec.
43-13-405. Repealed.
43-13-407. Establishment of Health Care Expendable Fund; annual transfers from Health Care Trust Fund; expenditures to be exclusively for health care purposes; authorization to borrow funds to offset temporary cash flow deficiencies in Expendable Fund [Subsections (1), (2), (3), (5), (6) and (7) repealed effective July 1, 2022].

## § 43-13-405. Repealed.

Repealed by its own terms, effective July 1, 2017.

§ 43-13-405. [Laws, 1999, ch. 493, § 3; Laws, 2002, ch. 304, § 3; Laws, 2004, ch. 571, § 1; Laws, 2006, ch. 584, § 1; Laws, 2007, ch. 514, § 19; Laws, 2009, ch. 563, § 5; Laws, 2011, ch. 469, § 5; Laws, 2011, ch. 506, § 4; Laws, 2013, ch. 518, § 2; Laws, 2016, ch. 460, § 7, eff from and after July 1, 2016.]

**Editor's Notes** — Former § 43-13-405, which established the Health Care Trust Fund; provided that fund to remain inviolate; authorized transfer of certain assets of the fund if there is a reciprocal transfer into the fund, is repealed effective July 1, 2017, by its own terms.

## § 43-13-407. Establishment of Health Care Expendable Fund; annual transfers from Health Care Trust Fund; expenditures to be exclusively for health care purposes; authorization to borrow funds to offset temporary cash flow deficiencies in Expendable Fund [Subsections (1), (2), (3), (5), (6) and (7) repealed effective July 1, 2022].

(1) In accordance with the purposes of this article, there is established in the State Treasury the Health Care Expendable Fund, into which shall be transferred from the Health Care Trust Fund the following sums:

(a) In fiscal year 2005, Four Hundred Fifty-six Million Dollars ($456, 000,000.00);

(b) In fiscal year 2006, One Hundred Eighty-six Million Dollars ($186, 000,000.00);

(c) In fiscal year 2007, One Hundred Eighty-six Million Dollars ($186, 000,000.00);

(d) In fiscal year 2008, One Hundred Six Million Dollars ($106,000,000.00);

(e) In fiscal year 2009, Ninety-two Million Two Hundred Fifty Thousand Dollars ($92,250,000.00);

(f) In the fiscal year beginning after the calendar year in which none of the amount of the annual tobacco settlement installment payment will be deposited into the Health Care Expendable Fund as provided in subsection (3)(d) of this section, and in each fiscal year thereafter, a sum equal to the average annual amount of the dividends, interest and other income, including increases in value of the principal, earned on the funds in the Health Care Trust Fund during the preceding four (4) fiscal years.

(2) In any fiscal year in which interest, dividends and other income from the investment of the funds in the Health Care Trust Fund are not sufficient to fund the full amount of the annual transfer into the Health Care Expendable Fund as required in subsection (1)(f) of this section, the State Treasurer shall transfer from tobacco settlement installment payments an amount that is sufficient to fully fund the amount of the annual transfer.

(3) Beginning with calendar year 2009, at the time that the State of Mississippi receives the tobacco settlement installment payment for each calendar year, the State Treasurer shall deposit the following amounts of each of those installment payments into the Health Care Expendable Fund:

(a) In calendar years 2009 and 2010, the total amount of the installment payment;

(b) In calendar year 2011, the amount of the installment payment less Ten Million Dollars ($10,000,000.00);

(c) In calendar years 2012, 2013 and 2014, the total amount of the installment payment;

(d) In calendar year 2015, and each calendar year thereafter, the total amount of the installment payment.

(4)(a) In addition to any other sums required to be transferred from the Health Care Trust Fund to the Health Care Expendable Fund, the sum of One Hundred Twelve Million Dollars ($112,000,000.00) shall be transferred from the Health Care Trust Fund to the Health Care Expendable Fund in fiscal year 2011.

(b) In addition to any other sums required to be transferred from the Health Care Trust Fund to the Health Care Expendable Fund, the sum of Fifty-six Million Two Hundred Sixty-three Thousand Four Hundred Thirty-eight Dollars ($56,263,438.00) shall be transferred from the Health Care Trust Fund to the Health Care Expendable Fund during fiscal year 2012.

(c) In addition to any other sums required to be transferred from the Health Care Trust Fund to the Health Care Expendable Fund, the sum of

Ninety-seven Million Four Hundred Fifty Thousand Three Hundred Thirty-two Dollars ($97,450,332.00) shall be transferred from the Health Care Trust Fund to the Health Care Expendable Fund during fiscal year 2013.

(d) In addition to any other sums required to be transferred from the Health Care Trust Fund to the Health Care Expendable Fund, the sum of Twenty-three Million One Hundred Thousand Dollars ($23,100,000.00) shall be transferred from the Health Care Trust Fund to the Health Care Expendable Fund during fiscal year 2014.

(e) The State Fiscal Officer shall transfer the entire balance in the Health Care Trust Fund to the Health Care Expendable Fund during fiscal year 2015.

(5) If Medicaid expenditures are projected to exceed the amount of funds appropriated to the Division of Medicaid in any fiscal year in excess of the expenditure reductions to providers, funds shall be transferred by the State Fiscal Officer from the Health Care Trust Fund into the Health Care Expendable Fund and then to the Governor's Office, Division of Medicaid, in the amount and at such time as requested by the Governor to reconcile the deficit.

(6) All income from the investment of the funds in the Health Care Expendable Fund shall be credited to the account of the Health Care Expendable Fund. Any funds in the Health Care Expendable Fund at the end of a fiscal year shall not lapse into the State General Fund. Any funds appropriated from the Health Care Expendable Fund that are unexpended at the end of a fiscal year shall lapse into the Health Care Expendable Fund.

(7) The funds in the Health Care Expendable Fund shall be available for expenditure under specific appropriation by the Legislature beginning in fiscal year 2000, and shall be expended exclusively for health care purposes.

(8) The provisions of subsection (1) of this section may not be changed in any manner except upon amendment to that subsection by a bill enacted by the Legislature with a vote of not less than three-fifths (3/5) of the members of each house present and voting.

(9) If the State Treasurer, in consultation with the Executive Director of the Department of Finance and Administration, determines that there is a need to borrow funds to offset any temporary cash-flow deficiencies in the Health Care Expendable Fund created in this section, the Treasurer may borrow those funds from any state-source special funds in the State Treasury in amounts that can be repaid from the Health Care Expendable Fund during the fiscal year in which the funds are borrowed. The State Treasurer shall immediately notify the Legislative Budget Office and the Department of Finance and Administration of each transfer into and out of the Health Care Expendable Fund.

(10) No later than September 30, 2011, the State Treasurer shall transfer from the Health Care Expendable Fund to the Health Care Trust Fund an amount equivalent to the unencumbered ending cash balance of the Health Care Expendable Fund as of June 30, 2011, less Three Million Eight Hundred Forty Thousand Dollars ($3,840,000.00).

(11) Subsections (1), (2), (3), (5), (6) and (7) of this section shall stand repealed on July 1, 2022.

**HISTORY: Laws, 1999, ch. 493, § 4; Laws, 2002, ch. 304, § 2; Laws, 2003, ch. 424, § 1; Laws, 2004, ch. 571, § 2; Laws, 2004, ch. 595, § 12; Laws, 2005, 1st Ex Sess, ch. 1, § 1; Laws, 2006, ch. 531, § 1; Laws, 2007, ch. 560, § 1; Laws, 2008, ch. 507, § 4; Laws, 2009, 2nd Ex Sess, ch. 118, § 4; Laws, 2009, ch. 563, § 6; Laws, 2010, ch. 562, § 6; Laws, 2011, ch. 506, § 5; Laws, 2012, ch. 547, § 2; Laws, 2013, ch. 518, § 3; Laws, 2014, ch. 534, § 2; Laws, 2015, ch. 471, § 14, eff from and after passage (approved Apr. 22, 2015); Laws, 2019, ch. 481, § 3, eff from and after passage (approved April 18, 2019).**

**Amendment Notes —** The 2019 amendment, effective April 18, 2019, extended the date of the repealer for subsections (1), (2), (3), (5), (6) and (7) by substituting “July 1, 2022” for “July 1, 2019.”

# CHAPTER 15.

# CHILD WELFARE

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## ARTICLE 1.

## ADMINISTRATION OF CHILD WELFARE.

Sec.
43-15-13. Foster care placement program; objectives; system of individualized plans and reviews; training program for persons who provide foster care and relative care; placement priorities and goals; changes in placement; notice to families; rights and responsibilities of persons who provide foster care and relative care.
43-15-14. Emergency placement of children in home care; performance of federal name-based criminal history records check of all adults residing in placement home.
43-15-17. Payments for supportive services; relative care payments.

### § 43-15-3. Powers and duties of Department of Human Services; appeal to Director of Division of Family and Children’s Services for denial of foster care and/or adoption assistance.

**Editor’s Notes —** Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children’s Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

### § 43-15-5. Administration of child welfare services.

**Editor’s Notes —** Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective

May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

### § 43-15-6. Criminal background checks and child abuse registry checks for providers of children's services in residential setting; authority to exclude certain crimes as disqualifying from providing child care; penalties; administrative immunity.

**Editor's Notes** — Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

### § 43-15-13. Foster care placement program; objectives; system of individualized plans and reviews; training program for persons who provide foster care and relative care; placement priorities and goals; changes in placement; notice to families; rights and responsibilities of persons who provide foster care and relative care.

(1) For purposes of this section, "children" means persons found within the state who are under the age of twenty-one (21) years, and who were placed in the custody of the Department of Child Protection Services by the youth court of the appropriate county. For purposes of this chapter, "commercial sexual exploitation" means any sexual act or crime of a sexual nature, which is committed against a child for financial or economic gain, to obtain a thing of value, for quid pro quo exchange of property or any other purpose.

(2) The Department of Child Protection Services shall establish a foster care placement program for children whose custody lies with the department, with the following objectives:

(a) Protecting and promoting the health, safety and welfare of children;

(b) Preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems and preventing the breakup of the family where the prevention of child removal is desirable and possible when the child can be cared for at home without endangering the child's health and safety;

(c) Remedying or assisting in the solution of problems that may result in the neglect, abuse, exploitation, commercial sexual exploitation, human trafficking or delinquency of children;

(d) Restoring to their families children who have been removed, by the provision of services to the child and the families when the child can be cared for at home without endangering the child's health and safety;

(e) Placing children in suitable adoptive homes approved by a licensed adoption agency or family protection specialist, in cases where restoration to the biological family is not safe, possible or appropriate;

(f) Assuring safe and adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption, including temporary or emergency placement with a relative or fictive kin pending youth court action on the case. At the time of placement, the department shall implement concurrent planning, as described in subsection (8) of this section, so that permanency may occur at the earliest opportunity. Consideration of possible failure or delay of reunification should be given, to the end that the placement made is the best available placement to provide permanency for the child; and

(g) Providing a family protection specialist or worker or team of such specialists or workers for a family and child throughout the implementation of their permanent living arrangement plan. Wherever feasible, the same family protection specialist or worker or team shall remain on the case until the child is no longer under the jurisdiction of the youth court.

(3) The Department of Child Protection Services shall administer a system of individualized plans, reviews and reports once every six (6) months for each child under its custody within the State of Mississippi, which document each child who has been adjudged a neglected, abandoned or abused child, including a child alleged to have experienced commercial sexual exploitation and/or human trafficking and whose custody was changed by court order as a result of that adjudication, and each public or private facility licensed by the department. The Department of Child Protection Services' administrative review shall be completed on each child within the first three (3) months and a relative placement, fictive kin placement, or foster care review once every six (6) months after the child's initial forty-eight-hour shelter hearing. That system shall be for the purpose of enhancing potential family life for the child by the development of individual plans to return the child to the child's natural parent or parents, or to refer the child to the appropriate court for termination of parental rights and placement in a permanent relative's home, adoptive home or foster/adoptive home. The goal of the Department of Child Protection Services shall be to return the child to the child's natural parent(s) or refer the child to the appropriate court for termination of parental rights and placement in a permanent relative's home, adoptive home or foster/adoptive home within the time periods specified in this subsection or in subsection (4) of this section. In furthering this goal, the department shall establish policy and procedures designed to appropriately place children in permanent homes, provide counseling services and other appropriate services to children who have been victims of commercial sexual exploitation or human trafficking. The policy shall include a system of reviews for all children in foster care, as follows: foster care counselors in the department shall make all possible contact with the child's natural parent(s), custodial parent(s) of all siblings of the child, and any interested relative for the first two (2) months following the child's entry into the foster care system, and provide care for victims of commercial sexual

exploitation or human trafficking. For purposes of contacting custodial parent(s) of a sibling, siblings include those who are considered a sibling under state law, and those who would have been considered a sibling under state law, except for termination or disruption of parental rights. For any child who has been in foster care for fifteen (15) of the last twenty-two (22) months regardless of whether the foster care was continuous for all of those twenty-two (22) months, the department shall file a petition to terminate the parental rights of the child's parents. The time period starts to run from the date the court makes a finding of abuse and/or neglect, or commercial sexual exploitation or human trafficking, or sixty (60) days from when the child was removed from his or her home, whichever is earlier. The department can choose not to file a termination of parental rights petition if the following apply:

(a) The child is being cared for by a relative; and/or

(b) The department has documented compelling and extraordinary reasons why termination of parental rights would not be in the best interests of the child. Before granting or denying a request by the department for an extension of time for filing a termination of parental rights action, the court shall receive a written report on the progress which a parent of the child has made in treatment, to be made to the court in writing by a mental health/substance abuse therapist or counselor.

(4) In the case of any child who is placed in foster care on or after July 1, 1998, except in cases of aggravated circumstances prescribed in Section 43-21-603(7)(c), the child's natural parent(s) will have a reasonable time to be determined by the court, which shall not exceed a six-month period of time, in which to meet the service agreement with the department for the benefit of the child unless the department has documented extraordinary and compelling reasons for extending the time period in the best interest of the child. If this agreement has not been satisfactorily met, simultaneously the child will be referred to the appropriate court for termination of parental rights and placement in a permanent relative's home, adoptive home or a foster/adoptive home. For children under the age of three (3) years, termination of parental rights shall be initiated within six (6) months, unless the department has documented compelling and extraordinary circumstances, and placement in a permanent relative's home, adoptive home or foster/adoptive home within two (2) months. For children who have been abandoned under the provisions of Section 97-5-1, termination of parental rights shall be initiated within thirty (30) days and placement in an adoptive home shall be initiated without necessity for placement in a foster home. The department need not initiate termination of parental rights proceedings where the child has been placed in durable legal custody, durable legal relative guardianship, or long-term or formalized foster care by a court of competent jurisdiction.

(5) The foster care review once every six (6) months shall be conducted by the youth court or its designee(s), and/or by personnel within the Department of Child Protection Services or by a designee or designees of the department and may include others appointed by the department, and the review shall include at a minimum an evaluation of the child based on the following:

(a) The extent of the care and support provided by the parents or parent while the child is in temporary custody;

(b) The extent of communication with the child by parents, parent or guardian;

(c) The degree of compliance by the agency and the parents with the social service plan established;

(d) The methods of achieving the goal and the plan establishing a permanent home for the child;

(e) Social services offered and/or utilized to facilitate plans for establishing a permanent home for the child; and

(f) Relevant testimony and recommendations from the foster parent of the child, the grandparents of the child, the guardian ad litem of the child, when appointed, the Court-Appointed Special Advocate (CASA) of the child, representatives of any private care agency that has cared for the child, the family protection worker or family protection specialist assigned to the case, and any other relevant testimony pertaining to the case.

Each child's review plan once every six (6) months shall be filed with the court which awarded custody and shall be made available to natural parents or foster parents upon approval of the court. The court shall make a finding as to the degree of compliance by the agency and the parent(s) with the child's social service plan. The court also shall find that the child's health and safety are the paramount concern. In the interest of the child, the court shall, where appropriate, initiate proceedings on its own motion. The Department of Child Protection Services shall report to the Legislature as to the number of those children, the findings of the foster care review board and relevant statistical information in foster care in a semiannual report to the Legislature to be submitted to the Joint Oversight Committee of the Department of Child Protection Services. The report shall not refer to the specific name of any child in foster care.

(6)(a) The Department of Child Protection Services, with the cooperation and assistance of the State Department of Health, shall develop and implement a training program for foster care parents to indoctrinate them as to their proper responsibilities upon a child's entry into their foster care. The program shall provide a minimum of twelve (12) clock hours of training, which shall include training foster care parents about providing mental and physical support to children who have experienced commercial sexual exploitation or human trafficking. The foster care training program shall be satisfactorily completed by such foster care parents before or within ninety (90) days after child placement with the parent. Record of the foster care parent's training program participation shall be filed with the court as part of a child's foster care review plan once every six (6) months.

(b)(i) The court may waive foster care training for an appropriate relative placement.

(ii) A relative exempted from foster care training is not eligible for board payments, foster care payments, kinship care payments, therapeutic care payments, or any other monthly payments from the department to assist in the care of the child.

(7) When the Department of Child Protection Services is considering placement of a child in a foster home and when the department deems it to be in the best interest of the child, the department shall give first priority to placing the child in the home of one (1) of the child's relatives within the third degree, as computed by the civil law rule.

(a) In placing the child in a relative's home, the department may waive any rule, regulation or policy applicable to placement in foster care that would otherwise require the child to have a separate bed or bedroom or have a bedroom of a certain size, if placing the child in a relative's home would be in the best interest of the child and those requirements cannot be met in the relative's home.

(b) The court may waive foster care training for a relative only when appropriate.

(8) The Legislature recognizes that the best interests of the child require that the child be placed in the most permanent living arrangement as soon as is practicably possible. To achieve this goal, the Department of Child Protection Services is directed to conduct concurrent planning so that a permanent living arrangement may occur at the earliest opportunity. Permanent living arrangements may include prevention of placement of a child outside the home of the family when the child can be cared for at home without endangering the child's health or safety; reunification with the family, when safe and appropriate, if temporary placement is necessary; or movement of the child toward the most permanent living arrangement and permanent legal status. When a child is placed in foster care or relative care, the department shall first ensure and document that reasonable efforts, as defined in Section 43-21-105, were made to prevent or eliminate the need to remove the child from the child's home. The department's first priority shall be to make reasonable efforts to reunify the family when temporary placement of the child occurs or shall request a finding from the court that reasonable efforts are not appropriate or have been unsuccessful. A decision to place a child in foster care or relative care shall be made with consideration of the child's health, safety and best interests. At the time of placement, consideration should also be given so that if reunification fails or is delayed, the placement made is the best available placement to provide a permanent living arrangement for the child. The department shall adopt rules addressing concurrent planning for reunification and a permanent living arrangement. The department shall consider the following factors when determining appropriateness of concurrent planning:

(a) The likelihood of prompt reunification;

(b) The past history of the family;

(c) The barriers to reunification being addressed by the family;

(d) The level of cooperation of the family;

(e) The foster parents' willingness to work with the family to reunite;

(f) The willingness and ability of the foster family or relative placement to provide an adoptive home or long-term placement;

(g) The age of the child; and

(h) Placement of siblings.

(9) If the department has placed a child in foster care or relative care under a court order, the department may not change the child's placement unless the department specifically documents to the court that the current placement is unsafe or unsuitable or that another placement is in the child's best interests unless the new placement is in an adoptive home or other permanent placement. Except in emergency circumstances as determined by the department or where the court orders placement of the child under Section 43-21-303, the foster parents, grandparents or other relatives of the child shall be given an opportunity to contest the specific reasons documented by the department at least seventy-two (72) hours before any such departure, and the court may conduct a review of that placement unless the new placement is in an adoptive home or other permanent placement. When a child is returned to foster care or relative care, the former foster parents or relative placement shall be given the prior right of return placement in order to eliminate additional trauma to the child.

(10) The Department of Child Protection Services shall provide the foster parents, grandparents or other relatives with at least a seventy-two-hour notice of departure for any child placed in their foster care or relative care, except in emergency circumstances as determined by the department or where the court orders placement of the child under Section 43-21-303. The parent/legal guardian, grandparents of the child, guardian ad litem and the court exercising jurisdiction shall be notified in writing when the child leaves foster care or relative care placement, regardless of whether the child's departure was planned or unplanned. The only exceptions to giving a written notice to the parent(s) are when a parent has voluntarily released the child for adoption or the parent's legal rights to the child have been terminated through the appropriate court with jurisdiction.

(11) The Department of Child Protection Services shall extend the following rights to persons who provide foster care and relative care:

(a) A clear understanding of their role while providing care and the roles of the birth parent(s) and the placement agency in respect to the child in care;

(b) Respect, consideration, trust and value as a family who is making an important contribution to the agency's objectives;

(c) Involvement in all the agency's crucial decisions regarding the child as team members who have pertinent information based on their day-to-day knowledge of the child in care;

(d) Support from the family protection worker or the family protection specialist in efforts to do a better day-to-day job in caring for the child and in working to achieve the agency's objectives for the child and the birth family through provision of:

(i) Pertinent information about the child and the birth family;

(ii) Help in using appropriate resources to meet the child's needs, including counseling or other services for victims of commercial sexual exploitation or human trafficking;

(iii) Direct interviews between the family protection worker or specialist and the child, previously discussed and understood by the foster parents;

(iv) Information regarding whether the child experienced commercial sexual exploitation or human trafficking;

(e) The opportunity to develop confidence in making day-to-day decisions in regard to the child;

(f) The opportunity to learn and grow in their vocation through planned education in caring for the child;

(g) The opportunity to be heard regarding agency practices that they may question;

(h) Reimbursement for costs of the child's care in the form of a board payment based on the age of the child as prescribed in Section 43-15-17 unless the relative is exempt from foster care training and chooses to exercise the exemption; and

(i) Reimbursement for property damages caused by children in the custody of the Department of Child Protection Services in an amount not to exceed Five Hundred Dollars ($500.00), as evidenced by written documentation. The Department of Child Protection Services shall not incur liability for any damages as a result of providing this reimbursement.

(12) The Department of Child Protection Services shall require the following responsibilities from participating persons who provide foster care and relative care:

(a) Understanding the department's function in regard to the foster care and relative care program and related social service programs;

(b) Sharing with the department any information which may contribute to the care of children;

(c) Functioning within the established goals and objectives to improve the general welfare of the child;

(d) Recognizing the problems in home placement that will require professional advice and assistance and that such help should be utilized to its full potential;

(e) Recognizing that the family who cares for the child will be one of the primary resources for preparing a child for any future plans that are made, including return to birth parent(s), termination of parental rights or reinstitutionalization;

(f) Expressing their views of agency practices which relate to the child with the appropriate staff member;

(g) Understanding that all information shared with the persons who provide foster care or relative care about the child and his/her birth parent(s) must be held in the strictest of confidence;

(h) Cooperating with any plan to reunite the child with his birth family and work with the birth family to achieve this goal; and

(i) Attending dispositional review hearings and termination of parental rights hearings conducted by a court of competent jurisdiction, or providing their recommendations to the court in writing.

**HISTORY: Laws, 1978, ch. 443, § 1(2)(3); Laws, 1979, ch. 506, § 70; Laws, 1982,**

**ch. 318; Laws, 1989, ch. 412, § 1; Laws, 1997, ch. 603, § 1; Laws, 1998, ch. 516, § 3; Laws, 1999, ch. 569, § 1; Laws, 2000, ch. 381, § 1; Laws, 2001, ch. 479, § 1; Laws, 2006, ch. 600, § 2; Laws, 2008, ch. 538, § 1; Laws, 2015, ch. 402, § 1; Laws, 2017, ch. 420, § 3; Laws, 2017, ch. 427, § 1, eff from and after July 1, 2017; Laws, 2019, ch. 420, § 2, eff from and after July 1, 2019.**

**Joint Legislative Committee Note —** Section 3 of Chapter 420, Laws of 2017, effective from and after July 1, 2017 (approved April 12, 2017), amended this section. Section 1 of Chapter 427, Laws of 2017, effective from and after July 1, 2017 (approved April 13, 2017), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section amended within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 15, 2017, meeting of the Committee.

**Editor's Notes —** Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

**Amendment Notes —** The first 2017 amendment (ch. 420) inserted "when appointed, the Court-Appointed Special Advocate (CASA) of the child" in (5)(f); and made a minor stylistic change.

The second 2017 amendment (ch. 427) substituted "Department of Child Protection" for "Department of Human" throughout; added "including temporary…youth court action on the case" at the end of the first sentence of (2)(f); in (3), inserted "relative placement, fictive kin placement or" in the second sentence, and substituted "the child's natural" for "its natural" in the third and fourth sentences; inserted "durable legal relative guardianship" in the last sentence of (4); in (6), substituted "a child's foster care review plan" for "a foster care child's review plan" in the last sentence of (a), and added (b); in (7), designated the former second sentence (a) and added (b); inserted "as defined in Section 43-21-105" in the fourth sentence of (8); inserted "unless the relative is exempt from foster care training and chooses to exercise the exemption" in (11)(h); and made minor stylistic changes.

The 2019 amendment, added the last sentence of (1); inserted "commercial sexual exploitation, human trafficking" in (2)(c); in (3), in the first sentence, inserted "and reports" and made related changes, inserted "which document" and inserted "including a child alleged to have experienced commercial sexual exploitation and/or human trafficking," added "provide counseling services...exploitation or human trafficking" at the end of the fifth sentence, in the sixth sentence, substituted "The policy shall" for "The policy to" and added "and provide care...exploitation or human trafficking" at the end, and inserted "or commercial sexual exploitation or human trafficking" in the next-to-last sentence; added "which shall include...exploitation or human trafficking" at the end of the second sentence of (6)(a); and in (11)(d), added "including counseling-…exploitation or human trafficking" at the end of (ii), and added (iv).

## § 43-15-14. Emergency placement of children in home care; performance of federal name-based criminal history records check of all adults residing in placement home.

(1) As used in this section, "emergency placement" means those limited instances when the Mississippi Department of Child Protection Services is

placing a child in the home of private individuals, including relatives, neighbors or friends, as a result of a sudden unavailability of the child's primary caretaker.

(2) During an emergency placement situation when a child must be placed in home care due to the absence of parents or custodians, the Mississippi Department of Child Protection Services (MDCPS) may request that a criminal justice agency perform a federal name-based criminal history records check of each adult residing in the home. Name-based check results may be provided to the Mississippi Criminal Information Center (MCIC) of the Mississippi Department of Public Safety, which shall then provide a complete set of each adult resident's fingerprints to the MCIC central repository for the immediate submission to the Federal Bureau of Investigation (FBI) within fifteen (15) calendar days from the date the name search was conducted. The central repository shall either positively identify the fingerprint subject or forward the fingerprints to the FBI within fifteen (15) calendar days from the date the name search was conducted. The child shall be removed from the home immediately if any adult resident fails to provide fingerprints and written permission to perform a federal criminal history records check when requested.

(3) When placement of a child in a home is denied as a result of a name-based criminal history records check of a resident, and the resident contests that denial, each such resident shall, within fifteen (15) calendar days, submit to MDCPS a complete set of the resident's fingerprints with written permission allowing MCIC to forward the fingerprints to the MCIC criminal history records repository for submission to the FBI.

**HISTORY: Laws, 2017, ch. 395, § 3, eff from and after passage (approved Mar. 27, 2017); Laws, 2018, ch. 336, § 1, eff from and after July 1, 2018.**

**Editor's Notes** — Laws of 2017, ch. 395, § 4 provides:

"SECTION 4. Section 3 of this act shall take effect and be in force from and after its passage [March 27, 2017], and the remainder of this act shall take effect and be in force from and after July 1, 2017."

**Amendment Notes** — The 2018 amendment inserted "relatives" in (1); and substituted "fifteen (15) calendar days" for "fourteen (14) calendar days" twice in (2) and once in (3).

## § 43-15-15. Registry of children in custody of State Department of Public Welfare and public or private agencies.

**Editor's Notes** — Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

## § 43-15-17. Payments for supportive services; relative care payments.

(1) The Department of Child Protection Services is authorized to make

such payments as may be appropriate for supportive services to facilitate either the return of children to their natural parents or their adoption, depending upon and contingent upon the availability of the Department of Child Protection Services securing or having sufficient funds to render this supportive service. Upon court order, the parent(s) shall be responsible for reimbursing the department for any foster care or kinship care payments made on behalf of his or her child, based upon financial ability to pay, until such time as there is a termination of parental rights regarding the child, or the child is adopted.

(2) For those children placed in foster care by the state or county departments of human services, the department shall make monthly payments for the support of these children's room and board, clothing, allowance and personal needs. From and after July 1, 1998, and subject to the availability of funds specifically appropriated therefor, the Department of Child Protection Services' foster care and therapeutic care monthly payment schedule in effect before that date shall be increased by One Hundred Dollars ($100.00) per month, with that minimum payment not to preclude the department from increasing payments in later years as funds become available. From and after July 1, 1998, in order for foster parents to receive the monthly payments authorized under this subsection (2), the Department of Child Protection Services shall require foster care placements to be licensed as foster care homes and shall require prospective foster parents to satisfactorily complete an appropriate training program that emphasizes the goal of the foster care program to provide stable foster placement until a permanency outcome is achieved.

(3) For a child placed in the care of the child's relative within the third degree by the state or county departments of human services, unless a child is placed in the care of a relative who is exempt from foster care training requirements, the department shall make monthly payments to defray the relative's expense of furnishing room and board. The department's relative care payment shall be in an amount up to one hundred percent (100%) of the amount of the foster care board payment. The department may continue to make those payments to the relative after the department relinquishes legal custody of the child to the relative if the relative has complied with foster care training requirements. Any such payments for relative care shall be subject to specific appropriation therefor by the Legislature.

**HISTORY: Laws, 1978, ch. 443, § 1(5); Laws, 1998, ch. 516, § 4; Laws, 2007, ch. 480, § 1; Laws, 2008, ch. 538, § 2; Laws, 2017, ch. 427, § 2, eff from and after July 1, 2017.**

**Editor's Notes —** Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

**Amendment Notes —** The 2017 amendment substituted "Department of Child Protection" for "Department of Human" throughout; and in (3), inserted "unless a child is placed in the care of a relative who is exempt from foster care training requirements" in the first sentence, and "if the relative has complied with foster care training requirements" in the next-to-last sentence.

### § 43-15-19. Adoption resource exchange registry.

**Editor's Notes** — Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

### § 43-15-21. Penalty for releasing confidential information.

**Editor's Notes** — Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

### § 43-15-23. "Placing Out"; defined.

**Editor's Notes** — Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

## ARTICLE 2.

## MULTIDISCIPLINARY CHILD PROTECTION TEAMS.

Sec.
43-15-51. Formation of multidisciplinary child protection teams to evaluate and investigate reports of commercial sexual exploitation, human trafficking, child abuse and neglect; membership; order of Youth Court prerequisite to formation of teams; participation by experts and child advocacy centers; disclosure of information obtained from task force meetings prohibited.

### § 43-15-51. Formation of multidisciplinary child protection teams to evaluate and investigate reports of commercial sexual exploitation, human trafficking, child abuse and neglect; membership; order of Youth Court prerequisite to formation of teams; participation by experts and child advocacy centers; disclosure of information obtained from task force meetings prohibited.

(1) The district attorneys, the Department of Human Services or the Department of Child Protection Services may initiate formal cooperative

agreements with the appropriate agencies to create multidisciplinary child protection teams in order to implement a coordinated multidisciplinary team approach to intervention in reports involving alleged commercial sexual exploitation, human trafficking, or severe or potential felony child physical or sexual abuse, exploitation, or maltreatment. The multidisciplinary team also may be known as a child abuse task force. The purpose of the team or task force shall be to assist in the evaluation and investigation of reports and to provide consultation and coordination for agencies involved in child protection cases. The agencies to be included as members of the multidisciplinary team are: the district attorney's office, city and county law enforcement agencies, county attorneys, youth court prosecutors, the Human Trafficking Coordinator or his or her designee and other agencies as appropriate. The Department of Child Protection Services shall be included as a member of the multidisciplinary team if the department does not initiate creation of the team.

(2) Except as otherwise provided in Section 43-26-3, to implement the multidisciplinary child abuse team, the team or task force must be authorized by court order from the appropriate youth court. The court order will designate which agencies will participate in the cooperative multidisciplinary team.

(3)(a) Teams created under this section may invite other persons to serve on the team who have knowledge of and experience in child abuse and neglect and commercial sexual exploitation and human trafficking matters. These persons may include licensed mental and physical health practitioners and physicians, dentists, representatives of the district attorney's office and the Attorney General's office, experts in the assessment and treatment of substance abuse or sexual abuse, the victim assistance coordinator of the district attorney's office, staff members of a child advocacy center, sexual assault nurse examiners and experts in providing services to commercial sexual exploitation and human trafficking victims. For purposes of this paragraph, the term "sexual assault nurse examiner" means a registered nurse who has received a documented forty (40) hours of training as a sexual assault nurse examiner.

(b)(i) A child advocacy center means an agency that advocates on behalf of children alleged to have been abused and assists in the coordination of the investigation of child abuse by providing a location for forensic interviews and promoting the coordination of services for children alleged to have been abused. A child advocacy center provides services that include, but are not limited to, forensic medical examinations, mental health and related support services, court advocacy, consultation, training for social workers, law enforcement training, and child abuse multidisciplinary teams, and staffing of multidisciplinary teams.

(ii) Child advocacy centers may provide a video-taped forensic interview of the child in a child friendly environment or separate building. The purpose of the video-taped forensic interview is to prevent further trauma to a child in the investigation and prosecution of child physical and sexual abuse cases. Child advocacy centers can also assist child victims by providing therapeutic counseling subsequent to the interview by a qualified therapist. Child advocacy centers can also assist law enforcement and prosecutors by acquainting child victim witnesses and their parents or guardians to the courtroom through child court school programs.

(4) A team or task force created under this section shall review records on cases referred to the team by the Department of Child Protection Services or law enforcement or the district attorney's office. The team shall meet at least monthly.

(5) No person shall disclose information obtained from a meeting of the multidisciplinary team unless necessary to comply with the Department of Child Protection Services regulations or conduct and proceeding in youth court or criminal court proceedings or as authorized by a court of competent jurisdiction.

**HISTORY: Laws, 2002, ch. 339, § 1, eff from and after July 1, 2002; Laws, 2019, ch. 420, § 3, eff from and after July 1, 2019; Laws, 2020, ch. 493, § 8, eff from and after passage (approved July 9, 2020).**

**Editor's Notes —** Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

**Amendment Notes —** The 2019 amendment, in (1), in the first sentence, inserted "or the Department of Child Protection Services" and made a related change, and inserted "commercial sexual exploitation, human trafficking, or," inserted "the Human Trafficking Coordinator or his or her designee" in the next-to-last sentence, and added the last sentence; and in (3)(a), inserted "and commercial sexual exploitation and human trafficking" in the first sentence, and in the last sentence, added "and experts in providing services to commercial sexual exploitation and human trafficking victims" and made a related change.

The 2020 amendment, effective July 9, 2020, added the exception at the beginning of (2); in (3)(a), inserted "sexual assault nurse examiners" in the next-to-last sentence, and added the last sentence; and substituted "Department of Child Protection Services" for "Department of Human Services" in (4) and (5).

## ARTICLE 3.

## LICENSING OF FAMILY FOSTER HOMES, CHILD-CARING AGENCIES AND CHILD-PLACING AGENCIES.

Sec.
43-15-111. Exemptions from licensure requirements.

### § 43-15-103. Definitions.

**Editor's Notes —** Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

## § 43-15-105. Division of Family and Children's Services to be licensing authority; duties.

**Editor's Notes —** Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

## § 43-15-111. Exemptions from licensure requirements.

The provisions of this act do not apply to:

(a) A facility or program owned or operated by an agency of the State of Mississippi or United States government;

(b) A facility or program operated by or under an exclusive contract with the Department of Corrections;

(c) Schools and educational programs and facilities, the primary purpose of which is to provide a regular course of study necessary for advancement to a higher educational level or completion of a prescribed course of study, and which may, incident to such educational purposes, provide boarding facilities to the students of such programs.

(d) Any residential child-caring agency and/or child-placing agency operated or conducted under the auspices of a religious institution and meeting the requirements or conditions of this section shall be exempt from the licensure requirements of this article under the following conditions: (i) such religious institution must have a tax-exempt status as a nonprofit religious institution in accordance with Section 501(c) of the Internal Revenue Code of 1954, as amended, or the real property owned and exclusively occupied by the religious institution must be exempt from location taxation, and (ii) the agency or institution must be in compliance with the requirements of the Child Residential Home Notification Act, Section 43-16-1 et seq., Mississippi Code of 1972, and must not be in violation of Section 43-16-21(c) regarding the abuse and/or neglect of any child served by such home who has been adjudicated by the youth court as an abused and/or neglected child. Nothing in this paragraph shall prohibit a residential child-caring agency or child-placing agency operated by or conducted under the auspices of a religious institution from obtaining a license pursuant to this article.

(e) Placement of custody under a power of attorney executed under Section 93-31-1 et seq.

**HISTORY: Laws, 2000, ch. 379, § 6; Laws, 2016, ch. 494, § 2; Laws, 2016, ch. 501, § 5, eff from and after July 1, 2016.**

**Joint Legislative Committee Note —** Section 2 of ch. 494, Laws of 2016, effective from and after July 1, 2016 (approved at 10:10 a.m. on May 13, 2016), amended this section. Section 5 of ch. 501, Laws of 2016, effective July 1, 2016 (approved at 11:01 a.m. on May 13, 2016), also amended this section As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109, which gives the Joint

Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 5, 2016, meeting of the Committee.

**Editor's Notes** — The reference to "this act" in the introductory paragraph should probably be to "this article." The section is set out above as it appeared in the integrated version of the section approved by the Joint Legislative Committee on Compilation, Revision and Publication of Legislation at its August 5, 2016, meeting.

**Amendment Notes** — The first 2016 amendment (ch. 494) substituted "this act" for "this article" in the introductory language; redesignated former (1) through (4) as (a) through (d); and in present (d), redesignated former (a) and (b) as (i) and (ii), and substituted "Nothing in this paragraph shall" for "Nothing in this subsection shall."

The second 2016 amendment (ch. 501) redesignated former (1) through (4) as (a) through (d) and former (4)(a) and (b) as (d)(i) and (ii); added (e); and made minor stylistic changes.

## § 43-15-115. Inspections of facilities.

**Editor's Notes** — Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

## § 43-15-125. Immunity for Department of Human Services and its employees.

**Editor's Notes** — Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

### JUDICIAL DECISIONS

**1. Licensing immunity.**

In a case in which a minor foster child alleged that his foster parent sexually abused him, the circuit court erred by not granting summary judgment to the Mississippi Department of Human Services (DHS) because this statute granted immunity to the DHS for its licensing of foster homes. Miss. Dep't of Human Servs. v. D.C., 289 So. 3d 712, 2019 Miss. LEXIS 286 (Miss. 2019).

# ARTICLE 5.

# BABY DROP-OFF LAW.

Sec.
43-15-201. Emergency medical services provider to take possession of certain abandoned children; guarantee of anonymity of parent surrendering baby under baby drop-off law.
43-15-207. Definition of "emergency medical services provider.".

## § 43-15-201. Emergency medical services provider to take possession of certain abandoned children; guarantee of anonymity of parent surrendering baby under baby drop-off law.

(1) An emergency medical services provider, without a court order, shall take possession of a child who is seven (7) days old or younger if the child is voluntarily delivered to the provider by the child's parent and the parent did not express an intent to return for the child.

(2) The parent who surrenders the baby shall not be required to provide any information pertaining to his or her identity, nor shall the emergency medical services provider inquire as to same. If the identity of the parent is known to the emergency medical services provider, the emergency medical services provider shall keep the identity confidential.

(3) A female presenting herself to a hospital through the emergency room or otherwise, who is subsequently admitted for purposes of labor and delivery, does not give up the legal protections or anonymity guaranteed under this section. If the mother clearly expresses a desire to voluntarily surrender custody of the newborn after birth, the emergency medical services provider can take possession of the child, without further action by the mother, as if the child had been presented to the emergency medical services provider in the same manner outlined above in subsection (1) of this section.

(a) If the mother expresses a desire to remain anonymous, identifying information may be obtained for purposes of securing payment of labor and delivery costs only. If the birth mother is a minor, the hospital may use the identifying information to secure payment through Medicaid, but shall not notify the minor's parent or guardian without the minor's consent.

(b) The identity of the birth mother shall not be placed on the birth certificate or disclosed to the Department of Human Services.

(4) There is a presumption that by relinquishing a child in accordance with this section, the parent consents to the termination of his or her parental rights with respect to the child. As such, the parent waives the right to notification required by subsequent court proceedings.

(5) An emergency medical services provider who takes possession of a child under this section shall perform any act necessary to protect the physical health or safety of the child.

**HISTORY: Laws, 2001, ch. 484, § 1; Laws, 2012, ch. 404, § 1, eff from and after July 1, 2012; Laws, 2020, ch. 389, § 1, eff from and after July 1, 2020.**

**Editor's Notes —** Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

**Amendment Notes —** The 2020 amendment, in (1), substituted "seven (7) days old" for "seventy-two (72) hours old."

## § 43-15-203. Notification to Department of Human Services that provider has taken possession of abandoned child; department to assume care, control, and custody of child upon receipt of notification.

**Editor's Notes** — Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

## § 43-15-207. Definition of "emergency medical services provider."

For the purposes of this article, an emergency medical services provider shall mean a licensed hospital, as defined in Section 41-9-3, which operates an emergency department, an adoption agency duly licensed by the Department of Human Services, or fire station or mobile ambulance staffed with full-time firefighters, emergency medical technicians or paramedics. An emergency medical services provider does not include the offices, clinics, surgeries or treatment facilities of private physicians or dentists. No individual licensed healthcare provider, including physicians, dentists, nurses, physician assistants or other health professionals shall be deemed to be an emergency medical services provider under this article unless such individual voluntarily assumes responsibility for the custody of the child.

**HISTORY: Laws, 2001, ch. 484, § 4, eff from and after July 1, 2001; Laws, 2020, ch. 389, § 2, eff from and after July 1, 2020.**

**Editor's Notes** — Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

**Amendment Notes** — The 2020 amendment, in the first sentence, added "or fire station…or paramedics" at the end and made a related change.

# ARTICLE 9.

# MISSING CHILD REPORTS.

Sec.
43-15-401. Investigation of missing children; policies; procedures.

## § 43-15-401. Investigation of missing children; policies; procedures.

(1) Law enforcement agencies in this state shall adopt written policies that specify the procedures to be used to investigate reports of missing children. The policies must ensure that cases involving missing children are

investigated promptly using appropriate resources and are in compliance with the requirements of this section and 42 USCS 5779 and 5780. The policies must include:

(a) Procedures for accepting and filing missing child reports;

(b) Procedures for initiating, maintaining, closing or referring a missing child investigation;

(c) Procedures for the prompt and open transfer of information where multiple jurisdictions and agencies are involved in the investigation; and

(d) Standards for maintaining and clearing data concerning a missing child that is stored in the National Crime Information Center. The standards must require, at a minimum, a monthly review of each case and a determination of whether the case should be maintained in the database.

(2) A law enforcement agency shall not adopt rules, regulations or policies that prohibit or discourage the filing of a report or the taking of any action on a report that a child is a missing child or that a child is believed to be a missing child. For purposes of this section and in compliance with federal law, a runaway child is a missing child and shall not be excluded as such based solely on the fact the child has voluntarily absented himself from his normal place of residence.

(3) A law enforcement agency shall not establish a mandatory waiting period before accepting a missing child report and beginning an investigation to locate a missing child.

(4) An entry concerning a missing child may not be removed from the National Crime Information Center database based solely on the age of the missing child.

(5) Upon receiving a report that a child is missing, the law enforcement agency having jurisdiction shall immediately:

(a) File a report or cause a report to be filed in the county or municipality where the child resides or in which the child was last seen or both. Nothing in this subsection (5) shall preclude a law enforcement agency from accepting a missing child report when jurisdiction cannot be determined;

(b) Institute or assist with appropriate search and investigative procedures;

(c) Inform all on-duty law enforcement officers within the agency of the missing child report; and

(d) Transmit the report for inclusion within the National Crime Information Center database within the time frame required by federal law. Law enforcement agencies having the duty to enter the missing child report into the National Crime Information Center database shall provide any information required by the National Crime Information Center to effectuate the purpose of this section.

(6) Upon receiving a missing child report, as provided in subsection (5) of this section, the law enforcement agency that entered the report into the National Crime Information Center shall:

(a) No later than thirty (30) days after the original entry of the record into the National Crime Information Center computer networks, verify and update such record with any additional information, including, where available, medical and dental records and a photograph taken during the previous one hundred eighty (180) days;

(b) Notify the National Center for Missing and Exploited Children of each report received relating to a missing foster child.

(7) Upon receiving a missing child report, the law enforcement agency shall consider whether the circumstances under which the child went missing satisfy the criteria necessary for the issuance of an Amber Alert and, where applicable, shall immediately submit to the Mississippi Bureau of Investigation all required paperwork and documents necessary to request the issuance of an Amber Alert.

(8) Any person or institution reporting, in good faith, a child to be missing shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

**HISTORY: Laws, 2016, ch. 364, § 1, eff from and after July 1, 2016.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (5)(a) by substituting "Nothing in this subsection (5)" for "Nothing in this subsection (4)." The Joint Committee ratified the correction at its August 5, 2016, meeting.

# CHAPTER 16.

# CHILD RESIDENTIAL HOME NOTIFICATION ACT

Sec.

43-16-3. Definitions.
43-16-25. Licensure fees for child residential homes.

## § 43-16-3. Definitions.

As used in this chapter, the following definitions shall apply unless the context clearly provides otherwise:

(a) "Child" means a person who has not reached the age of eighteen (18) years or who has not otherwise been legally emancipated.

(b) "Child residential home" means any place, facility or home operated by any person which receives children who are not related to the operators and whose parents or guardians are not residents of the same facility for supervision, care, lodging and maintenance for twenty-four (24) hours a day, with or without transfer of custody. This term does not include:

(i) Residential homes licensed by the Department of Human Services under Section 43-15-5;

(ii) Any public school;

(iii) Any home operated by a state agency;

(iv) Child care facilities as defined in Section 43-20-5;

(v) Youth camps as defined in Section 75-74-3;

(vi) Health care facilities licensed by the State Department of Health; or

(vii) The home of an attorney-in-fact operating under a power of attorney executed under Section 93-31-1 et seq.

(c) “Department” shall mean the State Department of Health.

(d) “Person” shall include an individual, partnership, organization, association or corporation.

**HISTORY: Laws, 1989, ch. 493, § 2; Laws, 2016, ch. 501, § 6, eff from and after July 1, 2016.**

**Amendment Notes** — The 2016 amendment rewrote (b), which read: “‘Child residential home’ means any place, facility or home operated by any person which receives children who are not related to the operators and whose parents or guardians are not residents of the same facility for supervision, care, lodging and maintenance for twenty-four (24) hours a day, with or without transfer of custody. This term shall not include residential homes which are licensed by the State Department of Public Welfare under the provisions of Section 43-15-5, Mississippi Code of 1972, and shall not include any public school or any such home operated by a state agency, nor shall it include child care facilities as defined in Section 43-20-5, Mississippi Code of 1972, youth camps as defined in Section 75-74-3, Mississippi Code of 1972, or health care facilities licensed by the State Department of Health.”

## § 43-16-25. Licensure fees for child residential homes.

A license issued under the provisions of this chapter shall be renewed annually upon payment of a renewal fee not to exceed One Hundred Dollars ($100.00), and upon filing by the licensee of an annual report upon such uniform dates and upon forms provided by the licensing agency, accompanied by a current certificate of inspection and approval by the fire department and the county health department specified in Section 43-16-11.

Any increase in the fee charged by the board under this section shall be in accordance with the provisions of Section 41-3-65.

No governmental entity or agency shall be required to pay the fee or fees set forth in this section.

**HISTORY: Laws, 2000, ch. 365, § 1; Laws, 2016, ch. 510, § 32, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 32, eff from and after July 1, 2020.**

**Editor’s Notes** — Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020

**Amendment Notes** — The 2016 amendment added the next-to-last paragraph. The 2020 amendment reenacted the section without change.

# CHAPTER 17.

# TEMPORARY ASSISTANCE TO NEEDY FAMILIES

Sec.
43-17-5. Amount of assistance [Repealed effective July 1, 2023].

## § 43-17-5. Amount of assistance [Repealed effective July 1, 2023].

(1) The amount of Temporary Assistance for Needy Families (TANF) benefits which may be granted for any dependent child and a needy caretaker relative shall be determined by the county department with due regard to the resources and necessary expenditures of the family and the conditions existing in each case, and in accordance with the rules and regulations made by the Department of Human Services which shall not be less than the Standard of Need in effect for 1988, and shall be sufficient when added to all other income (except that any income specified in the federal Social Security Act, as amended, may be disregarded) and support available to the child to provide such child with a reasonable subsistence compatible with decency and health. The first family member in the dependent child's budget may receive an amount not to exceed One Hundred Ten Dollars ($110.00) per month; the second family member in the dependent child's budget may receive an amount not to exceed Thirty-six Dollars ($36.00) per month; and each additional family member in the dependent child's budget an amount not to exceed Twenty-four Dollars ($24.00) per month. The maximum for any individual family member in the dependent child's budget may be exceeded for foster or medical care or in cases of children with an intellectual disability or a physical disability. TANF benefits granted shall be specifically limited only (a) to children existing or conceived at the time the caretaker relative initially applies and qualifies for such assistance, unless this limitation is specifically waived by the department, or (b) to a child born following a twelve-consecutive-month period of discontinued benefits by the caretaker relative.

(2) TANF benefits in Mississippi shall be provided to the recipient family by an online electronic benefits transfer system.

(3) The Department of Human Services shall deny TANF benefits to the following categories of individuals, except for individuals and families specifically exempt or excluded for good cause as allowed by federal statute or regulation:

(a) Families without a minor child residing with the custodial parent or other adult caretaker relative of the child;

(b) Families which include an adult who has received TANF assistance for sixty (60) months after the commencement of the Mississippi TANF program, whether or not such period of time is consecutive;

(c) Families not assigning to the state any rights a family member may have, on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance, to support from any other person, as required by law;

(d) Families who fail to cooperate in establishing paternity or obtaining child support, as required by law;

(e) Any individual who has not attained eighteen (18) years of age, is not married to the head of household, has a minor child at least twelve (12) weeks of age in his or her care, and has not successfully completed a high school education or its equivalent, if such individual does not participate in educational activities directed toward the attainment of a high school diploma or its equivalent, or an alternative educational or training program approved by the department;

(f) Any individual who has not attained eighteen (18) years of age, is not married, has a minor child in his or her care, and does not reside in a place or residence maintained by a parent, legal guardian or other adult relative or the individual as such parent's, guardian's or adult relative's own home;

(g) Any minor child who has been, or is expected by a parent or other caretaker relative of the child to be, absent from the home for a period of more than thirty (30) days;

(h) Any individual who is a parent or other caretaker relative of a minor child who fails to notify the department of the absence of the minor child from the home for the thirty-day period specified in paragraph (g), by the end of the five-day period that begins with the date that it becomes clear to the individual that the minor child will be absent for the thirty-day period;

(i) Any individual who fails to comply with the provisions of the Employability Development Plan signed by the individual which prescribe those activities designed to help the individual become and remain employed, or to participate satisfactorily in the assigned work activity, as authorized under subsection (6)(c) and (d), or who does not engage in applicant job search activities within the thirty-day period for TANF application approval after receiving the advice and consultation of eligibility workers and/or caseworkers of the department providing a detailed description of available job search venues in the individual's county of residence or the surrounding counties;

(j) A parent or caretaker relative who has not engaged in an allowable work activity once the department determines the parent or caretaker relative is ready to engage in work, or once the parent or caretaker relative has received TANF assistance under the program for twenty-four (24) months, whether or not consecutive, whichever is earlier;

(k) Any individual who is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the jurisdiction from which the individual flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or who is violating a condition of probation or parole imposed under federal or state law;

(*l*) Aliens who are not qualified under federal law;

(m) For a period of ten (10) years following conviction, individuals convicted in federal or state court of having made a fraudulent statement or representation with respect to the individual's place of residence in order to receive TANF, food stamps or Supplemental Security Income (SSI) assistance under Title XVI or Title XIX simultaneously from two (2) or more states;

(n) Individuals who are recipients of federal Supplemental Security Income (SSI) assistance; and

(o) Individuals who are eighteen (18) years of age or older who are not in compliance with the drug testing and substance use disorder treatment requirements of Section 43-17-6.

(4)(a) Any person who is otherwise eligible for TANF benefits, including custodial and noncustodial parents, shall be required to attend school and meet the monthly attendance requirement as provided in this subsection if all of the following apply:

(i) The person is under age twenty (20);

(ii) The person has not graduated from a public or private high school or obtained a High School Equivalency Diploma equivalent;

(iii) The person is physically able to attend school and is not excused from attending school; and

(iv) If the person is a parent or caretaker relative with whom a dependent child is living, child care is available for the child.

The monthly attendance requirement under this subsection shall be attendance at the school in which the person is enrolled for each day during a month that the school conducts classes in which the person is enrolled, with not more than two (2) absences during the month for reasons other than the reasons listed in paragraph (e)(iv) of this subsection. Persons who fail to meet participation requirements in this subsection shall be subject to sanctions as provided in paragraph (f) of this subsection.

(b) As used in this subsection, "school" means any one (1) of the following:

(i) A school as defined in Section 37-13-91(2);

(ii) A vocational, technical and adult education program; or

(iii) A course of study meeting the standards established by the State Department of Education for the granting of a declaration of equivalency of high school graduation.

(c) If any compulsory-school-age child, as defined in Section 37-13-91(2), to which TANF eligibility requirements apply is not in compliance with the compulsory school attendance requirements of Section 37-13-91(6), the superintendent of schools of the school district in which the child is enrolled or eligible to attend shall notify the county department of human services of the child's noncompliance. The Department of Human Services shall review school attendance information as provided under this paragraph at all initial eligibility determinations and upon subsequent report of unsatisfactory attendance.

(d) The signature of a person on an application for TANF benefits constitutes permission for the release of school attendance records for that person or for any child residing with that person. The department shall request information from the child's school district about the child's attendance in the school district's most recently completed semester of attendance. If information about the child's previous school attendance is not available or cannot be verified, the department shall require the child to meet the monthly attendance requirement for one (1) semester or until the information is obtained. The department shall use the attendance information provided by a school district to verify attendance for a child. The department shall review with the parent or caretaker relative a child's claim that he or she has a good cause for not attending school.

A school district shall provide information to the department about the attendance of a child who is enrolled in a public school in the district within five (5) working days of the receipt of a written request for that information from the department. The school district shall define how many hours of attendance count as a full day and shall provide that information, upon request, to the department. In reporting attendance, the school district may add partial days' absence together to constitute a full day's absence.

If a school district fails to provide to the department the information about the school attendance of any child within fifteen (15) working days after a written request, the department shall notify the Department of Audit within three (3) working days of the school district's failure to comply with that requirement. The Department of Audit shall begin audit proceedings within five (5) working days of notification by the Department of Human Services to determine the school district's compliance with the requirements of this subsection (4). If the Department of Audit finds that the school district is not in compliance with the requirements of this subsection, the school district shall be penalized as follows: The Department of Audit shall notify the State Department of Education of the school district's noncompliance, and the Department of Education shall reduce the calculation of the school district's average daily attendance (ADA) that is used to determine the allocation of Mississippi Adequate Education Program funds by the number of children for which the district has failed to provide to the Department of Human Services the required information about the school attendance of those children. The reduction in the calculation of the school district's ADA under this paragraph shall be effective for a period of one (1) year.

(e) A child who is required to attend school to meet the requirements under this subsection shall comply except when there is good cause, which shall be demonstrated by any of the following circumstances:

(i) The minor parent is the caretaker of a child less than twelve (12) weeks old; or

(ii) The department determines that child care services are necessary for the minor parent to attend school and there is no child care available; or

(iii) The child is prohibited by the school district from attending school and an expulsion is pending. This exemption no longer applies once the teenager has been expelled; however, a teenager who has been expelled and is making satisfactory progress towards obtaining a High School Equivalency Diploma equivalent shall be eligible for TANF benefits; or

(iv) The child failed to attend school for one or more of the following reasons:

1. Illness, injury or incapacity of the child or the minor parent's child;

2. Court-required appearances or temporary incarceration;

3. Medical or dental appointments for the child or minor parent's child;

4. Death of a close relative;

5. Observance of a religious holiday;

6. Family emergency;

7. Breakdown in transportation;

8. Suspension; or

9. Any other circumstance beyond the control of the child, as defined in regulations of the department.

(f) Upon determination that a child has failed without good cause to attend school as required, the department shall provide written notice to the parent or caretaker relative (whoever is the primary recipient of the TANF benefits) that specifies:

(i) That the family will be sanctioned in the next possible payment month because the child who is required to attend school has failed to meet the attendance requirement of this subsection;

(ii) The beginning date of the sanction, and the child to whom the sanction applies;

(iii) The right of the child's parents or caretaker relative (whoever is the primary recipient of the TANF benefits) to request a fair hearing under this subsection.

The child's parent or caretaker relative (whoever is the primary recipient of the TANF benefits) may request a fair hearing on the department's determination that the child has not been attending school. If the child's parents or caretaker relative does not request a fair hearing under this subsection, or if, after a fair hearing has been held, the hearing officer finds that the child without good cause has failed to meet the monthly attendance requirement, the department shall discontinue or deny TANF benefits to the child thirteen (13) years old, or older, in the next possible payment month. The department shall discontinue or deny twenty-five percent (25%) of the family grant when a child six (6) through twelve (12) years of age without good cause has failed to meet the monthly attendance requirement. Both the child and family sanction may apply when children in both age groups fail to meet the attendance requirement without good cause. A sanction applied under this subsection shall be effective for one (1) month for each month that the child failed to meet the monthly attendance requirement. In the case of a dropout, the sanction shall remain in force until the parent or caretaker relative provides written proof from the school district that the child has reenrolled and met the monthly attendance requirement for one (1) calendar month. Any month in which school is in session for at least ten (10) days during the month may be used to meet the attendance requirement under this subsection. This includes attendance at summer school. The sanction shall be removed the next possible payment month.

(5) All parents or caretaker relatives shall have their dependent children receive vaccinations and booster vaccinations against those diseases specified

by the State Health Officer under Section 41-23-37 in accordance with the vaccination and booster vaccination schedule prescribed by the State Health Officer for children of that age, in order for the parents or caretaker relatives to be eligible or remain eligible to receive TANF benefits. Proof of having received such vaccinations and booster vaccinations shall be given by presenting the certificates of vaccination issued by any health care provider licensed to administer vaccinations, and submitted on forms specified by the State Board of Health. If the parents without good cause do not have their dependent children receive the vaccinations and booster vaccinations as required by this subsection and they fail to comply after thirty (30) days' notice, the department shall sanction the family's TANF benefits by twenty-five percent (25%) for the next payment month and each subsequent payment month until the requirements of this subsection are met.

(6)(a) If the parent or caretaker relative applying for TANF assistance is work eligible, as determined by the Department of Human Services, the person shall be required to engage in an allowable work activity once the department determines the parent or caretaker relative is determined work eligible, or once the parent or caretaker relative has received TANF assistance under the program for twenty-four (24) months, whether or not consecutive, whichever is earlier. No TANF benefits shall be given to any person to whom this section applies who fails without good cause to comply with the Employability Development Plan prepared by the department for the person, or who has refused to accept a referral or offer of employment, training or education in which he or she is able to engage, subject to the penalties prescribed in paragraph (e) of this subsection. A person shall be deemed to have refused to accept a referral or offer of employment, training or education if he or she:

(i) Willfully fails to report for an interview with respect to employment when requested to do so by the department; or

(ii) Willfully fails to report to the department the result of a referral to employment; or

(iii) Willfully fails to report for allowable work activities as prescribed in paragraphs (c) and (d) of this subsection.

(b) The Department of Human Services shall operate a statewide work program for TANF recipients to provide work activities and supportive services to enable families to become self-sufficient and improve their competitive position in the workforce in accordance with the requirements of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193), as amended, and the regulations promulgated thereunder, and the Deficit Reduction Act of 2005 (Public Law 109-171), as amended. Within sixty (60) days after the initial application for TANF benefits, the TANF recipient must participate in a job search skills training workshop or a job readiness program, which shall include resume writing, job search skills, employability skills and, if available at no charge, the General Aptitude Test Battery or its equivalent. All adults who are not specifically exempt shall be referred by the department for allowable work activities. An adult may be exempt from the mandatory work activity requirement for the following reasons:

(i) Incapacity;

(ii) Temporary illness or injury, verified by physician's certificate;

(iii) Is in the third trimester of pregnancy, and there are complications verified by the certificate of a physician, nurse practitioner, physician assistant, or any other licensed health care professional practicing under a protocol with a licensed physician;

(iv) Caretaker of a child under twelve (12) months, for not more than twelve (12) months of the sixty-month maximum benefit period;

(v) Caretaker of an ill or incapacitated person, as verified by physician's certificate;

(vi) Age, if over sixty (60) or under eighteen (18) years of age;

(vii) Receiving treatment for substance abuse, if the person is in compliance with the substance abuse treatment plan;

(viii) In a two-parent family, the caretaker of a severely disabled child, as verified by a physician's certificate; or

(ix) History of having been a victim of domestic violence, which has been reported as required by state law and is substantiated by police reports or court records, and being at risk of further domestic violence, shall be exempt for a period as deemed necessary by the department but not to exceed a total of twelve (12) months, which need not be consecutive, in the sixty-month maximum benefit period. For the purposes of this subparagraph (ix), "domestic violence" means that an individual has been subjected to:

1. Physical acts that resulted in, or threatened to result in, physical injury to the individual;

2. Sexual abuse;

3. Sexual activity involving a dependent child;

4. Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;

5. Threats of, or attempts at, physical or sexual abuse;

6. Mental abuse; or

7. Neglect or deprivation of medical care.

(c) For all families, all adults who are not specifically exempt shall be required to participate in work activities for at least the minimum average number of hours per week specified by federal law or regulation, not fewer than twenty (20) hours per week (thirty-five (35) hours per week for two-parent families) of which are attributable to the following allowable work activities:

(i) Unsubsidized employment;

(ii) Subsidized private employment;

(iii) Subsidized public employment;

(iv) Work experience (including work associated with the refurbishing of publicly assisted housing), if sufficient private employment is not available;

(v) On-the-job training;

(vi) Job search and job readiness assistance consistent with federal TANF regulations;

(vii) Community service programs;

(viii) Vocational educational training (not to exceed twelve (12) months with respect to any individual);

(ix) The provision of child care services to an individual who is participating in a community service program;

(x) Satisfactory attendance at high school or in a course of study leading to a high school equivalency certificate, for heads of household under age twenty (20) who have not completed high school or received such certificate;

(xi) Education directly related to employment, for heads of household under age twenty (20) who have not completed high school or received such equivalency certificate.

(d) The following are allowable work activities which may be attributable to hours in excess of the minimum specified in paragraph (c) of this subsection:

(i) Job skills training directly related to employment;

(ii) Education directly related to employment for individuals who have not completed high school or received a high school equivalency certificate;

(iii) Satisfactory attendance at high school or in a course of study leading to a high school equivalency, for individuals who have not completed high school or received such equivalency certificate;

(iv) Job search and job readiness assistance consistent with federal TANF regulations.

(e) If any adult or caretaker relative refuses to participate in allowable work activity as required under this subsection (6), the following full family TANF benefit penalty will apply, subject to due process to include notification, conciliation and a hearing if requested by the recipient:

(i) For the first violation, the department shall terminate the TANF assistance otherwise payable to the family for a two-month period or until the person has complied with the required work activity, whichever is longer;

(ii) For the second violation, the department shall terminate the TANF assistance otherwise payable to the family for a six-month period or until the person has complied with the required work activity, whichever is longer;

(iii) For the third violation, the department shall terminate the TANF assistance otherwise payable to the family for a twelve-month period or until the person has complied with the required work activity, whichever is longer;

(iv) For the fourth violation, the person shall be permanently disqualified.

For a two-parent family, unless prohibited by state or federal law, Medicaid assistance shall be terminated only for the person whose failure to participate in allowable work activity caused the family's TANF assistance to be sanctioned under this paragraph (e), unless an individual is pregnant, but shall not be terminated for any other person in the family who is meeting that person's applicable work requirement or who is not required to work. Minor children shall continue to be eligible for Medicaid benefits regardless of the disqualification of their parent or caretaker relative for TANF assistance under this subsection (6), unless prohibited by state or federal law.

(f) Any person enrolled in a two-year or four-year college program who meets the eligibility requirements to receive TANF benefits, and who is meeting the applicable work requirements and all other applicable requirements of the TANF program, shall continue to be eligible for TANF benefits while enrolled in the college program for as long as the person meets the requirements of the TANF program, unless prohibited by federal law.

(g) No adult in a work activity required under this subsection (6) shall be employed or assigned (i) when any other individual is on layoff from the same or any substantially equivalent job within six (6) months before the date of the TANF recipient's employment or assignment; or (ii) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy so created with an adult receiving TANF assistance. The Mississippi Department of Employment Security, established under Section 71-5-101, shall appoint one or more impartial hearing officers to hear and decide claims by employees of violations of this paragraph (g). The hearing officer shall hear all the evidence with respect to any claim made hereunder and such additional evidence as he may require and shall make a determination and the reason therefor. The claimant shall be promptly notified of the decision of the hearing officer and the reason therefor. Within ten (10) days after the decision of the hearing officer has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action, in the circuit court of the county in which the claimant resides, against the department for the review of such decision, in which action any other party to the proceeding before the hearing officer shall be made a defendant. Any such appeal shall be on the record which shall be certified to the court by the department in the manner provided in Section 71-5-531, and the jurisdiction of the court shall be confined to questions of law which shall render its decision as provided in that section.

(7) The Department of Human Services may provide child care for eligible participants who require such care so that they may accept employment or remain employed. The department may also provide child care for those participating in the TANF program when it is determined that they are satisfactorily involved in education, training or other allowable work activities. The department may contract with Head Start agencies to provide child care services to TANF recipients. The department may also arrange for child care by use of contract or vouchers, provide vouchers in advance to a caretaker relative, reimburse a child care provider, or use any other arrangement

deemed appropriate by the department, and may establish different reimbursement rates for child care services depending on the category of the facility or home. Any center-based or group home child care facility under this subsection shall be licensed by the State Department of Health pursuant to law. When child care is being provided in the child's own home, in the home of a relative of the child, or in any other unlicensed setting, the provision of such child care may be monitored on a random basis by the Department of Human Services or the State Department of Health. Transitional child care assistance may be continued if it is necessary for parents to maintain employment once support has ended, unless prohibited under state or federal law. Transitional child care assistance may be provided for up to twenty-four (24) months after the last month during which the family was eligible for TANF assistance, if federal funds are available for such child care assistance.

(8) The Department of Human Services may provide transportation or provide reasonable reimbursement for transportation expenses that are necessary for individuals to be able to participate in allowable work activity under the TANF program.

(9) Medicaid assistance shall be provided to a family of TANF program participants for up to twenty-four (24) consecutive calendar months following the month in which the participating family would be ineligible for TANF benefits because of increased income, expiration of earned income disregards, or increased hours of employment of the caretaker relative; however, Medicaid assistance for more than twelve (12) months may be provided only if a federal waiver is obtained to provide such assistance for more than twelve (12) months and federal and state funds are available to provide such assistance.

(10) The department shall require applicants for and recipients of public assistance from the department to sign a personal responsibility contract that will require the applicant or recipient to acknowledge his or her responsibilities to the state.

(11) The department shall enter into an agreement with the State Personnel Board and other state agencies that will allow those TANF participants who qualify for vacant jobs within state agencies to be placed in state jobs. State agencies participating in the TANF work program shall receive any and all benefits received by employers in the private sector for hiring TANF recipients. This subsection (11) shall be effective only if the state obtains any necessary federal waiver or approval and if federal funds are available therefor.

(12) Any unspent TANF funds remaining from the prior fiscal year may be expended for any TANF allowable activities.

(13) The Mississippi Department of Human Services shall provide TANF applicants information and referral to programs that provide information about birth control, prenatal health care, abstinence education, marriage education, family preservation and fatherhood.

(14) No new TANF program requirement or restriction affecting a person's eligibility for TANF assistance, or allowable work activity, which is not mandated by federal law or regulation may be implemented by the Depart-

ment of Human Services after July 1, 2004, unless such is specifically authorized by an amendment to this section by the Legislature.

**HISTORY: Codes, 1942, § 7173; Laws, 1940, ch. 294; Laws, 1944, ch. 292, § 1; Laws, 1957, Ex Sess, ch. 22; Laws, 1962, ch. 559, § 2; Laws, 1968, ch. 562, § 3; Laws, 1978, ch. 303, § 1; Laws, 1985, ch. 383, § 3; Laws, 1993, ch. 614, § 11; Laws, 1994, ch. 582, § 6; Laws, 1997, ch. 316, § 3; Laws, 1999, ch. 390, § 1; Laws, 2004, ch. 572, § 49; Laws, 2006, ch. 547, § 1; Laws, 2008, ch. 533, § 1; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 49; Laws, 2010, ch. 476, § 72; Laws, 2010, ch. 559, §49; Laws, 2011, ch. 471, § 50; Laws, 2012, ch. 515, § 50; Laws, 2014, ch. 398, § 10; Laws, 2014, ch. 430, § 2, eff from and after July 1, 2014; reenacted and amended, Laws, 2019, ch. 451, § 49, eff from and after passage (approved April 3, 2019).**

**Editor's Notes —** Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, and as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

**Amendment Notes —** The 2019 amendment, effective April 3, 2019, reenacted and amended the section by substituting "paragraph (c) of this subsection" for "subsection (6)(c)" in (6)(d), and by substituting "paragraph (e)" for "subsection (6)(e)" in the last paragraph of (6)(e).

# CHAPTER 18.

# INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

## § 43-18-3. "Appropriate public authorities" defined; powers of county departments of public welfare.

**Editor's Notes —** Section 43-26-1, enacted by Chapter 494, Laws of 2016, effective May 13, 2016, provides that from and after July 1, 2018, the programs and services provided by the Office of Family and Children's Services of the Department of Human Services under this section will be provided by the Department of Child Protection Services.

# CHAPTER 19.

# SUPPORT OF NATURAL CHILDREN

Child Support Unit. ........ 43-19-31

## CHILD SUPPORT UNIT

Sec.
43-19-33. Force and effect of written stipulated agreement to support and written admission of paternity containing agreement of support.
43-19-61. Child Support Prosecution Fund created; purpose; funding of expenses of legal division of Child Support Unit; deposit of user charges and fees authorized under this section into State General Fund.

## § 43-19-31. Child support unit authorized; purposes.

### JUDICIAL DECISIONS

**1. In general.**

Chancellor erred in ordering support accrued during a child's foster-care placement to be returned to the noncustodial parent because the Mississippi Department of Human Services was entitled to reimbursement for the child's foster-care placement before reunification with the custodial parent. Vance v. Miss. Dep't of Human Servs. (Child Support Div.), 203 So. 3d 11, 2016 Miss. App. LEXIS 667 (Miss. Ct. App. 2016).

## § 43-19-33. Force and effect of written stipulated agreement to support and written admission of paternity containing agreement of support.

(1) In lieu of legal proceedings instituted to obtain support for a dependent child from the responsible parent, a written stipulated agreement to support said child by periodic payments executed by the responsible parent when acknowledged before a clerk of the court having jurisdiction over such matters or a notary public and filed with and approved by the judge of the court having jurisdiction over such matters shall have the same force and effect, retroactively and prospectively, in accordance with the terms of said agreement as an order of support entered by the court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases.

(2) In lieu of legal proceedings instituted to establish paternity, a written admission of paternity containing a stipulated agreement of support executed by the putative father of the dependent child, when accompanied by a written declaration in support of establishing paternity provided under penalty of perjury to the best of her knowledge, information and belief by the mother of the dependent child, when acknowledged by the putative father before a clerk of the court having jurisdiction over such matters or a notary public and filed with and approved by the judge of the court having jurisdiction over such matters, shall have the same force and effect, retroactively and prospectively, in accordance with the terms of said agreement, as an order of filiation and support entered by the court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases.

(3) At any time after filing with the court having continuing jurisdiction of such matters of an acknowledgment of paternity in which a provision of support has not been entered, upon notice the defendant shall be required to appear in court at any time and place named therein, to show cause, if any he can, why the court should not enter an order for the support of the child by periodic payments. The order may include provisions for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expenses of the action under this subsection on the acknowledgment of paternity previously filed with said court. Notice by the department to the defendant shall be given by certified mail, restricted

delivery, return receipt requested at his last known mailing address and without the requirement of a summons being issued, and shall be deemed complete as of the date of delivery as evidenced by the return receipt. The required notice may also be delivered by personal service in accordance with Rule 4 of the Mississippi Rules of Civil Procedure insofar as service of an administrative order or notice is concerned. Provided, that in the case of a child who, upon reaching the age of twenty-one (21) years, is mentally or physically incapable of self-support, the putative father shall not be relieved of the duty of support unless said child is a long-term patient in a facility owned or operated by the State of Mississippi. The prior judgment as to paternity shall be res judicata as to that issue and shall not be reconsidered by the court.

(4) Such agreements of support, acknowledgments, declarations and affirmations of paternity and support shall be binding on the person executing the same whether he be an adult or a minor and may include provisions for the reimbursement of medical expenses incident to the pregnancy and birth of the child, accrued maintenance and reasonable expenses of any action previously filed before the court.

(5) In lieu of legal proceedings instituted to enforce an order for support, a written stipulated agreement for the provision of periodic payments towards an arrearage executed by the defendant when acknowledged before a clerk of the court having jurisdiction over such matters or a notary public and filed with and approved by the judge of the court having jurisdiction over such matters shall have the same force and effect, retroactively and prospectively, in accordance with the terms of said agreement as a judgment for overdue support entered by the court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases.

(6) All agreements entered into under the provisions as set forth hereinabove shall be filed by the clerk of the court having jurisdiction over such matters in the county in which they are entered and filing fees shall be taxed to the responsible parent.

**HISTORY: Laws, 1976, ch. 483, § 2; Laws, 1983, ch. 393, § 2; Laws, 1992, ch. 390, § 1; Laws, 1999, ch. 512, § 13, eff from and after July 1, 1999; Laws, 2020, ch. 466, § 1, eff from and after July 1, 2020.**

**Amendment Notes —** The 2020 amendment, in (1), inserted "having jurisdiction over such matters"; in (2), substituted "declaration in support of establishing paternity" for "affirmation of paternity," "provided under penalty of perjury to the best of her knowledge, information and belief" for "executed and sworn to" and "the court having jurisdiction over such matters" for "said court"; in (4), inserted "declarations' and deleted "be sworn to and shall" following "paternity and support shall"; and in (5), substituted "the court having jurisdiction over such matters" for "said court."

## § 43-19-34. Stipulated agreement for modification of support order; Child Support Unit authorized to send motion and notice of intent to modify; reviews for possible modification to be conducted on 3-year cycle; only upward adjustments to be ordered retroactively; noncustodial parent's arrearage not to bar review or downward modification.

### JUDICIAL DECISIONS

#### ANALYSIS

2. Retroactive upward modification of support.
4. Procedure

**2. Retroactive upward modification of support.**

Chancery court did not er in awarding a retroactive increase in child-support payments or in choosing the date the mother initially filed her separate petition for child support to implement the retroactive increase because the decision was a discretionary call. McKinney v. Hamp, 268 So. 3d 470, 2018 Miss. LEXIS 59 (Miss. 2018).

Substantial credible evidence supported a chancellor's child support award because the chancellor properly considered an obligor father's existing expenses and debts by considering the father's business expenses and the father's separate child support obligation and an obligee mother's income, and Section 43-19-101's guidelines were inappropriate in this particular case, and it was not an abuse of discretion to deny an upward retroactive modification. Thomas v. Crews, 203 So. 3d 701, 2016 Miss. App. LEXIS 704 (Miss. Ct. App. 2016).

**4. Procedure**

Department of human services did not have to prove a material change in circumstances in order for the chancellor to modify the father's child support obligation; however, there was no actual evidence as to the father's income or his adjusted gross income to support the amount of the modified child support obligation. Although the chancellor had sufficient information to support modification, remand was required for the introduction of additional evidence as to the father's income. Dixon v. Olmstead, 296 So. 3d 227, 2020 Miss. App. LEXIS 333 (Miss. Ct. App. 2020).

## § 43-19-35. Acceptance of public assistance for child as assignment to department of recipient's rights against nonsupporting parent; status of attorney initiating proceedings.

### JUDICIAL DECISIONS

**1. In general.**

Mother was a recipient of services under Title IV-D of the Social Security Act, and thus pursuant to the statute, counsel for the department of human services was authorized to initiate the child-support modification action on the mother's behalf; however, counsel for the department could not represent the mother on the contempt issue raised on appeal. Dixon v. Olmstead, 296 So. 3d 227, 2020 Miss. App. LEXIS 333 (Miss. Ct. App. 2020).

Because a mother assigned the mother's rights as payee to the Mississippi Department of Human Services by participation in Mississippi's Aid to Families with Dependent Children public assistance program prior to a youth court's reunification of custody order, a chancellor did not err in ordering disbursement of the collected child support to the various custodial family members. Vance v. Miss. Dep't of Human Servs. (Child Support Div.), 203 So. 3d 11, 2016 Miss. App. LEXIS 667 (Miss. Ct. App. 2016).

## § 43-19-37. Court orders of support to direct payment of support, attorney's fees and court costs to child support unit and not recipient.

### JUDICIAL DECISIONS

**1. Dismissal.**

Although plaintiff contended that he sufficiently alleged violation of several statutes, particularly Miss. Code Ann. §§ 43-19-37 and 43-19-61, which plaintiff argued required the establishment of a special fund that would be used for (among other things) paying his salary as a child support enforcement attorney, the trial court did not err in dismissing these claims pursuant to Miss. R. Civ. P. 12(b)(6). Satterfield v. State, 158 So. 3d 380, 2015 Miss. App. LEXIS 98 (Miss. Ct. App. 2015).

## § 43-19-45. State parent locator service; cooperation of state agencies and the like with Child Support Unit; confidentiality of records; authority to request employment verification, address and social security number of absent or nonsupporting parent or alleged parent; confidentiality of records; penalties [Repealed effective July 1, 2023].

**HISTORY: Laws, 1976, ch. 483, § 8; Laws, 1988, ch. 345; Laws, 1990, ch. 543, § 1; Laws, 1993, ch. 333, § 1; Laws, 1993, ch. 525, § 1; Laws, 1997, ch. 588, § 13; Laws, 2000, ch. 530, § 2; Laws, 2004, ch. 572, § 50; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 50; reenacted without change, Laws, 2010, ch. 559, § 50; reenacted without change, Laws, 2011, ch. 471, § 51; reenacted and amended, Laws, 2012, ch. 515, § 51, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 50, eff from and after passage (approved April 3, 2019).**

**Editor's Notes** — This section was reenacted without change by Laws of 2019, ch. 451, § 50, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, and as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

**Amendment Notes** — The 2019 amendment, effective April 3, 2019, reenacted the section without change.

## § 43-19-46. Report by employer to Directory of New Hires [Repealed effective July 1, 2023].

**HISTORY: Laws, 1997, ch. 588, § 4; Laws, 2004, ch. 572, § 51; Laws, 2007, ch. 336, § 1; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 51; Laws,**

**2011, ch. 471, § 52; Laws, 2011, ch. 530, § 9, eff from and after July 1, 2011; reenacted without change, Laws, 2019, ch. 451, § 51, eff from and after passage (approved April 3, 2019).**

**Editor's Notes —** This section was reenacted without change by Laws of 2019, ch. 451, § 51, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, and as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

**Amendment Notes —** The 2019 amendment, effective April 3, 2019, reenacted the section without change.

## § 43-19-61. Child Support Prosecution Fund created; purpose; funding of expenses of legal division of Child Support Unit; deposit of user charges and fees authorized under this section into State General Fund.

(1) There is created in the State Treasury a special fund to be designated as the "Child Support Prosecution Fund." The fund shall be used by the Office of the Attorney General for the prosecution of delinquent child support cases and may also be used to draw down the sixty-six percent (66%) federal reimbursement IV-D funds for support of the Legal Division of the Child Support Unit of the Mississippi Department of Human Services.

(2) From and after July 1, 2016, the expenses of the legal division of the Child Support Unit shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law and as determined by the State Fiscal Officer.

(3) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Laws, 2005, 2nd Ex Sess, ch. 1, § 3 eff from and after July 1, 2005; Laws, 1st Ex Sess, 2017, ch. 7, § 21, eff from and after passage (approved June 23, 2017).**

**Amendment Notes —** The 2017 amendment, effective June 23, 2017, in (1), rewrote the first sentence, which read: "There is created in the State Treasury a special trust fund to be designated as the 'Child Support Prosecution Trust Fund' "; and added (2) and (3).

### JUDICIAL DECISIONS

**1. Dismissal.**

Although plaintiff contended that he sufficiently alleged violation of several statutes, particularly Miss. Code Ann. §§ 43-19-37 and 43-19-61, which plaintiff argued required the establishment of a special fund that would be used for (among other things) paying his salary as a child support enforcement attorney, the trial court did not err in dismissing these claims pursuant to Miss. R. Civ. P. 12(b)(6). Satterfield v. State, 158 So. 3d 380, 2015 Miss. App. LEXIS 98 (Miss. Ct. App. 2015).

# CHILD SUPPORT AWARD GUIDELINES

## § 43-19-101. Child support award guidelines.

### JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Applicability.
3. Guidelines; adherence to.
4. Guidelines; deviation from.
5. Findings of fact.
7. Modification of support.
9. Imputed income.

**1. In general.**

Chancellor did not commit manifest error in obligating a husband to pay for his children's college expenses because the husband was more than able to provide his children with collegiate education commensurate with their parents' station in life and had already set up and partially funded college-expense trust funds for the children; the record was silent as to any material change that the husband might have suffered or how the payments of college expenses would be a financial hardship on him. Descher v. Descher, — So. 3d —, 2020 Miss. App. LEXIS 12 (Miss. Ct. App. Jan. 14, 2020), cert. dismissed, — So. 3d —, 2020 Miss. LEXIS 410 (Miss. 2020).

Chancellor properly required a husband to provide a one million dollar life insurance policy to ensure continued support of the parties' two minor children because the life insurance policy protected the children and the anticipated support obligation if their paying parent prematurely died; if the husband died before the potential future child support was fully paid, the children would lose that support. Descher v. Descher, — So. 3d —, 2020 Miss. App. LEXIS 12 (Miss. Ct. App. Jan. 14, 2020), cert. dismissed, — So. 3d —, 2020 Miss. LEXIS 410 (Miss. 2020).

Chancery court erred in a divorce by failing to address child support in relation to the wife's child from a previous relationship when the court awarded custody of the child to the wife because the husband's duties and obligations to support the child vested upon the husband's adoption of the child as the husband's child. Therefore, remand was necessary for the chancery court to determine whether child support for the child was warranted, and if so, in what amount. Hackler v. Hackler, 296 So. 3d 773, 2020 Miss. App. LEXIS 313 (Miss. Ct. App. 2020).

Award of child support in the amount of $1,200 until May 2019 and then $1,800 beginning June 1, 2019, was consistent with statutory requirements because the chancery court addressed the father's income, his payment of private school expenses, his payment for health insurance and life insurance, and the monthly expenses that the mother indicated she regularly incurred on behalf of the minor children; the father failed to provide the exact cost of health insurance coverage for the minor children; and the mother listed the monthly expenses for the minor children on her financial statement, totaling $1,904.66. Wildman v. Wildman, — So. 3d —, 2020 Miss. App. LEXIS 415 (Miss. Ct. App. July 28, 2020).

Chancery court properly included a father's signing bonus as part of his gross income when crafting a child-support award because the bonus had already been received, and it was reasonably expected to be available as contemplated by the statute; the father's signing bonus accounted for a major guaranteed portion of his income as a professional athlete. McKinney v. Hamp, 268 So. 3d 470, 2018 Miss. LEXIS 59 (Miss. 2018).

Chancery court was incorrect about the duration of a father's NFL contract because the bulk of the of the record supported that the NFL contract was for four years, not five; therefore, the case was remanded for the chancellor to recalculate the child-support order to reflect the father's contract as a four-year contract. McKinney v. Hamp, 268 So. 3d 470, 2018 Miss. LEXIS 59 (Miss. 2018).

Chancellor retained the discretion to classify a mother's lump-sum alimony as part of the mother's income when calculating the mother's child-support obligation when one of the parties' children began living with the father. Davis v. Davis, 222 So. 3d 1101, 2017 Miss. App. LEXIS 41 (Miss. Ct. App.), cert. denied, 223 So. 3d 786, 2017 Miss. LEXIS 302 (Miss. 2017).

**2. Applicability.**

Chancery court did not abuse its discretion in the amount of the child support awarded because the chancellor thoroughly considered the issue and provided sound reasons for the chancellor's decision to find the statutory guidelines to be inapplicable given the higher incomes involved. Ali v. Ali, 232 So. 3d 770, 2017 Miss. App. LEXIS 349 (Miss. Ct. App. 2017).

Child support award did not err because, inter alia, a chancellor made sufficient findings that the child support guidelines were applicable despite a father's annual income exceeding $100,000. Lacoste v. Lacoste, 197 So. 3d 897, 2016 Miss. App. LEXIS 460 (Miss. Ct. App. 2016).

**3. Guidelines; adherence to.**

Chancery court did not err by awarding a percentage of a husband's adjusted gross income as child support because the percentage was detailed by the child support guidelines. Gunter v. Gunter, 281 So. 3d 283, 2019 Miss. App. LEXIS 143 (Miss. Ct. App. 2019).

Chancery court did not err in decreasing the amount of child support because the calculation of child support was within the statutory guidelines; there was no evidence that the chancery court's calculation of the husband's income was incorrect. Elkins v. Elkins, 238 So. 3d 1204, 2018 Miss. App. LEXIS 49 (Miss. Ct. App. 2018).

Chancery court did not err by failing to order a husband to pay for his daughter's school tuition because it properly determined the amount of child support owed by the husband in accordance with the guidelines. Elkins v. Elkins, 238 So. 3d 1204, 2018 Miss. App. LEXIS 49 (Miss. Ct. App. 2018).

Chancellor did not abuse his discretion by setting child support based on the statutory guidelines and the father's admitted adjusted gross income at the time of trial. The chancellor was not required to predict and calculate a future adjusted gross income based only on the father's estimate of how much the fathers annual income would probably decrease in the future due to the father's resignation as head football coach of the school in which the father also taught. Harden v. Scarborough, 240 So. 3d 1246, 2018 Miss. App. LEXIS 145 (Miss. Ct. App. 2018).

Chancery court erred in awarding the mother only 20 percent of the father's adjusted gross income as this statute established a rebuttable presumption that support for three children should be 22 percent of the payor's adjusted gross income. Leblanc v. Leblanc, 271 So. 3d 494, 2018 Miss. App. LEXIS 524 (Miss. Ct. App. 2018).

Father's financial statement understated his net monthly income as $5,201, because the final months of 2016 showed gross earnings of approximately $10,000 per month and net pay, after deductions, of approximately $7,000 per month; and the father should have paid child support equal to 22 percent of his adjusted gross income. Leblanc v. Leblanc, 271 So. 3d 494, 2018 Miss. App. LEXIS 524 (Miss. Ct. App. 2018).

There was no error in a chancellor's judgment ordering a mother to pay child support, rather than to find the mother's teenage child to be emancipated, because despite the mother's assertion, the chancellor's judgment reflected that the chancellor possessed an awareness of the child's extensive mental-health issues and history. Furthermore, the chancellor's award of child support was within the statutory guidelines. Collins v. Miss. Dep't of Human Servs., — So. 3d —, 2017 Miss. App. LEXIS 351 (Miss. Ct. App. June 13, 2017).

Chancellor erred by using an incorrect income figure to calculate child support as a wife was earning far less at the car dealership where the wife worked at the time of the divorce than the wife had at a prior job as a medical laboratory technician on which the chancellor based the award. Because the chancellor's calculation of child support was based on a clear mathematical error, reversal of the child support award and remand for recalculation of the award was appropriate. Vassar v. Vassar, 228 So. 3d 367, 2017 Miss. App. LEXIS 607 (Miss. Ct. App. 2017).

Chancellor's upward deviation from the statutory guidelines for child support was affirmed where the chancellor made specific findings on the record, based in large part upon the mutual agreement among the parties regarding the lifestyle they wished their children to maintain, specifically noted that the husband's wage-earning capacity far exceeded the wife's, and that the husband was financially capable of providing those sums, and thus, the chancellor took into account the wife's wage-earning capacity in making his determination. Black v. Black, 240 So. 3d 1226, 2017 Miss. App. LEXIS 629 (Miss. Ct. App. 2017).

Mother stated that her monthly income was $5,130, and the record failed to establish that her income was enhanced by regular distributions from her trust or that she had other sources of income, and the father failed to submit any evidence to support his bare allegations regarding the mother's income; the chancellor did not abuse his discretion in failing to consider any distributions or undisclosed income for purposes of the child-support award. Ferrara v. Ferrara, 190 So. 3d 884, 2016 Miss. App. LEXIS 216 (Miss. Ct. App. 2016).

Chancellor properly computed the husband's income at $750 per day for three days a week, totaling $117,000 annual earnings; and, based on the fact that the set percentage of child support for two minor children was 20 percent and that the husband's adjusted gross income was $117,000, the chancellor properly determined the husband's monthly child-support payment would be $1,950 and subtracted taxes for a child-support award of $1,800 per month. Branch v. Branch, 174 So. 3d 932, 2015 Miss. App. LEXIS 470 (Miss. Ct. App. 2015).

**4. Guidelines; deviation from.**

Chancellor's award of child support was supported by the record, and his decision was not manifest error nor an abuse of discretion, because the children were accustomed to a standard of living where the husband made $ 71,377 per month, and they were living on $ 7,500 per month; the wife's financial declaration did not cap out the maximum amount of child support the chancellor could grant, and the husband's monthly income and earning potential far surpassed hers. Descher v. Descher, — So. 3d —, 2020 Miss. App. LEXIS 12 (Miss. Ct. App. Jan. 14, 2020), cert. dismissed, — So. 3d —, 2020 Miss. LEXIS 410 (Miss. 2020).

Father's child support order did not err because (1) the father's income was reasonably estimated given the father's limited evidence, (2) it was proper to deviate from the child support guidelines due to the father's income exceeding $100,000, (3) the order was properly reduced based on the amount of time the children spent with the father, and (4) a credit was properly given for Social Security benefits the children received due to the father's disability. Thomas v. Thomas, 281 So. 3d 1191, 2019 Miss. App. LEXIS 270 (Miss. Ct. App. 2019).

Chancery court did not err by awarding one-half of day-care costs, because this was a justifiable deviation from the guidelines, and uninsured medical expenses, because they were not included in the guidelines. However, the court erred in awarding one-half of private-school tuition because the court did not make a written or specific finding as to why the deviation from the guidelines was needed. Gunter v. Gunter, 281 So. 3d 283, 2019 Miss. App. LEXIS 143 (Miss. Ct. App. 2019).

Chancellor properly ordered an ex-husband pay 20 percent of his adjusted gross income, plus 50 percent of the children's private-school tuition and expenses, because, while it was an upward deviation of the guidelines, the chancellor made detailed findings as to the parties' financial conditions and earning capacities. Bruton v. Bruton, 271 So. 3d 528, 2018 Miss. App. LEXIS 540 (Miss. Ct. App. 2018).

Chancery court provided sufficient justification for modifying the father's monthly child-support payments and deviating from the statutory guidelines because a material change in circumstances occurred, namely, an increase in the father's income, the increased age of the child, and the total available assets. Taylor v. Timmons (In re C.T.), 228 So. 3d 311, 2017 Miss. App. LEXIS 332 (Miss. Ct. App. 2017).

Chancellor found the child support statutory percentage was to be adjusted based on the parties' joint custody arrangement, and the chancellor further ordered that the father continue to provide insurance for the child, and this was supported and authorized by statute. Rayner v. Sims, 228 So. 3d 353, 2017 Miss. App. LEXIS 612 (Miss. Ct. App. 2017).

Substantial credible evidence supported a chancellor's child support award because the chancellor properly considered an obligor father's existing expenses and debts by considering the father's business expenses and the father's separate child support obligation and an obligee mother's income, and Section 43-19-101's guidelines were inappropriate in this particular case, and it was not an abuse of discretion to deny a retroactive award. Thomas v. Crews, 203 So. 3d 701, 2016 Miss. App. LEXIS 704 (Miss. Ct. App. 2016).

**5. Findings of fact.**

Because a husband's income exceeded $100,000, the chancellor was required to make written findings as to whether the application of the Mississippi child support guidelines was reasonable. Therefore, because the chancellor failed to do so reversal of that aspect of the chancellor's judgment and remand of the issue for a determination as to whether the statutory guidelines should have applied along with a determination of the amount of support to be paid was appropriate. Vandenbrook v. Vandenbrook, 292 So. 3d 991, 2019 Miss. App. LEXIS 119 (Miss. Ct. App.), cert. denied, 279 So. 3d 1087, 2019 Miss. LEXIS 418 (Miss. 2019).

Chancery court erred in failing to deduct a father's mandatory retirement contributions from his gross income because mandatory retirement contributions had to be deducted from gross income; the father's financial statements showed monthly retirement contributions, which he claims were mandatory, but the chancellor made no findings about those contributions. McKinney v. Hamp, 268 So. 3d 470, 2018 Miss. LEXIS 59 (Miss. 2018).

Chancery court did not deviate from the guidelines and thus, was not required to make specific findings on each factor, but all that was required was for the chancery court to find, in writing, that the standard, statutory, fourteen-percent guideline applied; the chancery court's overall written analysis supported her decision because it considered, among other things the parents' ages, health, incomes, and living expenses, and the child's age, expenses, and future needs. McKinney v. Hamp, 268 So. 3d 470, 2018 Miss. LEXIS 59 (Miss. 2018).

Because the chancery court failed to make specific findings as to why a father was to be obligated to pay the children's private school tuition in excess of the ordered child support, reversal of the judgment as to this issue and remand for further findings was appropriate, especially as the father's court-ordered monthly financial obligations exceeded seventy percent of the father's monthly income. Baumbach v. Baumbach, 242 So. 3d 193, 2018 Miss. App. LEXIS 158 (Miss. Ct. App. 2018).

For purposes of the chancellor's child support award, the chancellor failed to make an express finding of fact as to the husband's income, and thus the matter was remanded for the proper considerations. Foreman v. Foreman, 223 So. 3d 178, 2017 Miss. App. LEXIS 398 (Miss. Ct. App. 2017).

Chancellor provided a sufficient explanation to deviate from the statutory guidelines of child support and include private-school tuition for the parties' child based upon the parties' detailed testimony that the former husband wanted their child to continue the child's education at an academy where the child had been for years. The chancellor was able both to downwardly modify the husband's child support nearly by half, and provide for private-school tuition within the obligation. Bell v. Bell, 206 So. 3d 1254, 2016 Miss. App. LEXIS 778 (Miss. Ct. App. 2016).

Chancery court decision to deny a mother's request for payment of an arrearage was manifestly wrong and clearly erroneous because the nontaxable federal payments a father received for basic allowable housing and basic allowable subsistence were a form of earned income; the United States Navy paid the father additional income for his housing and subsistence, and those payments were earned by the father and assisted him with the payment of his monthly expenses. Price v. Snowden, 187 So. 3d 159, 2015 Miss. App. LEXIS 365 (Miss. Ct. App. 2015), cert. denied, 186 So. 3d 854, 2016 Miss. LEXIS 127 (Miss. 2016).

Father could have filed a post-judgment motion for findings, but instead he sought reversal based on the lack of specific findings of fact as to why the increase in his child support obligation was in excess of the guidelines; because the chancellor provided no findings of facts as to why the award deviated from the guidelines, the factors that were considered in modifying the father's obligation could not be determined, and this mandated reversal and remand. Dailey v. McBeath, 151 So. 3d 1038, 2014 Miss. App. LEXIS 683 (Miss. Ct. App. 2014).

**7. Modification of support.**

Chancellor did not abuse the chancellor's discretion by denying a mother's request to increase the father's monthly child support obligation and, instead, ordering the father to pay the children's private school tuition because of the children's special educational needs which required them to remain enrolled in the private school. Davis v. Davis, 217 So. 3d 714, 2017 Miss. App. LEXIS 44 (Miss. Ct. App. 2017).

Chancellor did not abuse its discretion in its modification of child support because the chancellor increased a father's child-support obligation to conform with statutory guidelines, but that figure was offset by the chancellor's decision to order the mother to pay the father child support for their one child then living with the father. Furthermore, the chancellor found that the father's criminal convictions was a substantial and material change in circumstances as the father was then having trouble finding employment. Davis v. Davis, 222 So. 3d 1101, 2017 Miss. App. LEXIS 41 (Miss. Ct. App.), cert. denied, 223 So. 3d 786, 2017 Miss. LEXIS 302 (Miss. 2017).

It was within a chancellor's discretion to find that child-care expenses required an upward deviation in a former spouse's child-support obligation. Hickey v. Hickey, 166 So. 3d 43, 2014 Miss. App. LEXIS 728 (Miss. Ct. App. 2014), cert. denied, 166 So. 3d 38, 2015 Miss. LEXIS 332 (Miss. 2015).

Chancery court did not err in deciding that the father had to pay a portion of the child's college expenses and all of her health insurance because the father did not present any evidence of how his lifestyle would change; the father's financial documents showed that he was able to help with college expenses; and the child clearly showed aptitude for and the potential to benefit from college according to her high-school record. Harris v. Porter, 196 So. 3d 224, 2016 Miss. App. LEXIS 471 (Miss. Ct. App. 2016).

Chancery court did not err in increasing the father's child-support payments because the child-support payments had not increased in 15 years; and the chancery court was provided with the father's adjusted gross income and calculated the percentage set out in this statute. Harris v. Porter, 196 So. 3d 224, 2016 Miss. App. LEXIS 471 (Miss. Ct. App. 2016).

**9. Imputed income.**

Chancellor properly imputed additional income to the mother in an irreconcilable-differences divorce because the evidence of the mother's lifestyle did not support the mother's claim as to the amount of the mother's adjusted-gross income. The mother owned a day-care business, reported substantial earnings on tax returns, paid off a note on real property, purchased a new home, and the mother's emancipated child testified that the mother told the child that the mother had purchased an airplane and a boat. Williams v. Williams, 264 So. 3d 722, 2019 Miss. LEXIS 27 (Miss. 2019).

## § 43-19-103. Criteria for overcoming presumption that guidelines are appropriate.

### JUDICIAL DECISIONS

#### ANALYSIS

1. In general.
3. Education expenses.
4. Business expenses.
5. Findings.

**1. In general.**

Father's child support order did not err because (1) the father's income was reasonably estimated given the father's limited evidence, (2) it was proper to deviate from the child support guidelines due to the father's income exceeding $100,000, (3) the order was properly reduced based on the amount of time the children spent with the father, and (4) a credit was properly given for Social Security benefits the children received due to the father's disability. Thomas v. Thomas, 281 So. 3d 1191, 2019 Miss. App. LEXIS 270 (Miss. Ct. App. 2019).

Chancery court did not deviate from the guidelines and thus, was not required to make specific findings on each factor, but all that was required was for the chancery court to find, in writing, that the standard, statutory, fourteen-percent guideline applied; the chancery court's overall written analysis supported her decision because it considered, among other things the parents' ages, health, incomes, and living expenses, and the child's age, expenses, and future needs. McKinney v. Hamp, 268 So. 3d 470, 2018 Miss. LEXIS 59 (Miss. 2018).

Reversal of chancery court's upward modification of child support was appropriate because the increase in child support was based upon speculative income on the part of the father. Furthermore, the chancellor on remand was to make specific on-the-record findings that the application of the child-support guidelines was unjust or inappropriate in the case. Gipson v. Jackson, 236 So. 3d 846, 2018 Miss. App. LEXIS 70 (Miss. Ct. App. 2018).

Chancellor found the child support statutory percentage was to be adjusted based on the parties' joint custody arrangement, and the chancellor further ordered that the father continue to provide insurance for the child, and this was supported and authorized by statute. Rayner v. Sims, 228 So. 3d 353, 2017 Miss. App. LEXIS 612 (Miss. Ct. App. 2017).

It was within a chancellor's discretion to find that child-care expenses required an upward deviation in a former spouse's child-support obligation. Hickey v. Hickey, 166 So. 3d 43, 2014 Miss. App. LEXIS 728 (Miss. Ct. App. 2014), cert. denied, 166 So. 3d 38, 2015 Miss. LEXIS 332 (Miss. 2015).

Child support award did not err because, inter alia, it was not error to apply the child support guidelines despite the fluctuating income of a father's business, as the father had always been able to maintain the business's profitability. Lacoste v. Lacoste, 197 So. 3d 897, 2016 Miss. App. LEXIS 460 (Miss. Ct. App. 2016).

**3. Education expenses.**

Chancellor provided a sufficient explanation to deviate from the statutory guidelines of child support and include private-school tuition for the parties' child based upon the parties' detailed testimony that the former husband wanted their child to continue the child's education at an academy where the child had been for years. The chancellor was able both to downwardly modify the husband's child support nearly by half, and provide for private-school tuition within the obligation. Bell v. Bell, 206 So. 3d 1254, 2016 Miss. App. LEXIS 778 (Miss. Ct. App. 2016).

**4. Business expenses.**

Substantial credible evidence supported a chancellor's child support award because the chancellor properly considered an obligor father's existing expenses and debts by considering the father's business expenses and the father's separate child support obligation and an obligee mother's income, and Section 43-19-101's guidelines were inappropriate in this particular case, and it was not an abuse of discretion to deny an upward retroactive modification. Thomas v. Crews, 203 So. 3d 701, 2016 Miss. App. LEXIS 704 (Miss. Ct. App. 2016).

**5. Findings.**

Reversal of chancery court's upward modification of child support was appropriate because the increase in child support was based upon speculative income on the part of the father. Furthermore, the chancellor on remand was to make specific on-the-record findings that the application of the child-support guidelines was unjust or inappropriate in the case. Gipson v. Jackson, 236 So. 3d 846, 2018 Miss. App. LEXIS 70 (Miss. Ct. App. 2018).

# CHAPTER 20.

# CHILD CARE FACILITIES

Mississippi Child Care Licensing Law. .......... 43-20-1
Family Child Care Homes. .......... 43-20-51

## MISSISSIPPI CHILD CARE LICENSING LAW

Sec.
43-20-8. Powers and duties of licensing agency; parental access to facilities; obtaining criminal records and child abuse registry records of current and prospective caregivers; authority to exclude certain crimes or findings as disqualifying for licensure; immunity; fee for background check; immunization against invasive pneumococcal disease.
43-20-11. Application for and issuance of license.
43-20-13. Renewal of license.

### § 43-20-8. Powers and duties of licensing agency; parental access to facilities; obtaining criminal records and child abuse registry records of current and prospective caregivers; authority to exclude certain crimes or findings as disqualifying for licensure; immunity; fee for background check; immunization against invasive pneumococcal disease.

(1) The licensing agency shall have powers and duties as set forth below, in addition to other duties prescribed under this chapter:

(a) Promulgate rules and regulations concerning the licensing and regulation of child care facilities as defined in Section 43-20-5;

(b) Have the authority to issue, deny, suspend, revoke, restrict or otherwise take disciplinary action against licensees as provided for in this chapter;

(c) Set and collect fees and penalties as provided for in this chapter; any increase in the fees charged by the licensing agency under this paragraph shall be in accordance with the provisions of Section 41-3-65; and

(d) Have such other powers as may be required to carry out the provisions of this chapter.

(2) Child care facilities shall assure that parents have welcome access to the child care facility at all times and shall comply with the provisions of Chapter 520, Laws of 2006.

(3) Each child care facility shall develop and maintain a current list of contact persons for each child provided care by that facility. An agreement may be made between the child care facility and the child's parent, guardian or contact person at the time of registration to inform the parent, guardian or contact person if the child does not arrive at the facility within a reasonable time.

(4) Child care facilities shall require that, for any current or prospective caregiver, all criminal records, background and sex offender registry checks and current child abuse registry checks are obtained. In order to determine the applicant's suitability for employment, the applicant shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check.

(5) The licensing agency shall require to be performed a criminal records background check and a child abuse registry check for all operators of a child care facility and any person living in a residence used for child care. The Department of Human Services shall have the authority to disclose to the State Department of Health any potential applicant whose name is listed on the Child Abuse Central Registry or has a pending administrative review. That information shall remain confidential by all parties. In order to determine the applicant's suitability for employment, the applicant shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check.

(6) The licensing agency shall have the authority to exclude a particular crime or crimes or a substantiated finding of child abuse and/or neglect as disqualifying individuals or entities for prospective or current employment or licensure.

(7) The licensing agency and its agents, officers, employees, attorneys and representatives shall not be held civilly liable for any findings, recommendations or actions taken under this section.

(8) All fees incurred in compliance with this section shall be borne by the child care facility. The licensing agency is authorized to charge a fee that includes the amount required by the Federal Bureau of Investigation for the national criminal history record check in compliance with the Child Protection Act of 1993, as amended, and any necessary costs incurred by the licensing agency for the handling and administration of the criminal history background checks.

(9) From and after January 1, 2008, the State Board of Health shall develop regulations to ensure that all children enrolled or enrolling in a state licensed child care center receive age-appropriate immunization against inva-

sive pneumococcal disease as recommended by the Advisory Committee on immunization practices of the Centers for Disease Control and Prevention. The State Board of Health shall include, within its regulations, protocols for children under the age of twenty-four (24) months to catch up on missed doses. If the State Board of Health has adopted regulations before January 1, 2008, that would otherwise meet the requirements of this subsection, then this subsection shall stand repealed on January 1, 2008.

**HISTORY: Laws, 1990, ch. 552, § 5; Laws, 1996, ch. 479, § 1; Laws, 2000, ch. 415, § 2; Laws, 2000, ch. 499, § 26; Laws, 2003, ch. 554, § 1; Laws, 2004, ch. 579, § 2; Laws, 2005, ch. 450, § 5; Laws, 2006, ch. 520, § 13; Laws, 2007, ch. 418, § 1; Laws, 2016, ch. 510, § 33, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 33, eff from and after July 1, 2020.**

**Editor's Notes —** Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

**Amendment Notes —** The 2016 amendment inserted "any increase in the fees . . . Section 41-3-65" in (1)(c).

The 2020 amendment reenacted the section without change.

## § 43-20-11. Application for and issuance of license.

An application for a license under this chapter shall be made to the licensing agency upon forms provided by it, and shall contain such information as the licensing agency may reasonably require. Each application for a license shall be accompanied by a license fee not to exceed Four Hundred Dollars ($400.00), which shall be paid to the licensing agency. Any increase in the fee charged by the licensing agency under this section shall be in accordance with the provisions of Section 41-3-65. Licenses shall be granted to applicants upon the filing of properly completed application forms, accompanied by payment of the license fee, and a certificate of inspection and approval by the fire department of the municipality or other political subdivision in which the facility is located, and by a certificate of inspection and approval by the health department of the county in which the facility is located, and approval by the licensing agency; except that if no fire department exists where the facility is located, the State Fire Marshal shall certify as to the inspection for safety from fire hazards. The fire, county health department and licensing agency inspections and approvals shall be based upon regulations promulgated by the licensing agency as approved by the State Board of Health.

Each license shall be issued only for the premises and person or persons named in the application and shall not be transferable or assignable except with the written approval of the licensing agency. Licenses shall be posted in a conspicuous place on the licensed premises.

No governmental entity or agency shall be required to pay the fee or fees set forth in this section.

**HISTORY: Codes, 1942, § 7129-136; Laws, 1972, ch. 528, § 6; Laws, 1979, ch. 445, § 8; Laws, 1986, ch. 371, § 7; Laws, 1990, ch. 552, § 7; Laws, 1991, ch. 606,**

**§ 8; Laws, 2000, ch. 415, § 3; Laws, 2008, ch. 495, § 3; Laws, 2016, ch. 510, § 34, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 34, eff from and after July 1, 2020.**

**Editor's Notes —** Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

**Amendment Notes —** The 2016 amendment added the third sentence of the first paragraph; and made minor stylistic changes.

The 2020 amendment reenacted the section without change.

## § 43-20-13. Renewal of license.

A license issued under the provisions of this chapter shall be renewed upon payment of a renewal fee not to exceed Four Hundred Dollars ($400.00) per year, and upon filing by the licensee of a report upon such uniform dates and upon forms provided by the licensing agency, accompanied by a current certificate of inspection and approval by the fire department and the county health department specified in Section 43-20-11.

Any increase in the fee charged by the licensing agency under this section shall be in accordance with the provisions of Section 41-3-65.

No governmental entity or agency shall be required to pay the fee or fees set forth in this section.

**HISTORY: Codes, 1942, § 7129-137; Laws, 1972, ch. 528, § 7; Laws, 1979, ch. 445, § 9; Laws, 1986, ch. 371, § 8; brought forward, Laws, 1990, ch. 552, § 9; Laws, 1991, ch. 606, § 9; Laws, 2000, ch. 415, § 4; Laws, 2008, ch. 495, § 4; Laws, 2016, ch. 510, § 35, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 35, eff from and after July 1, 2020.**

**Editor's Notes —** Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

**Amendment Notes —** The 2016 amendment added the next-to-last paragraph; and made a minor stylistic change.

The 2020 amendment reenacted the section without change.

## FAMILY CHILD CARE HOMES

Sec.
43-20-59. Registration.

## § 43-20-59. Registration.

(1) Any person maintaining a family child care home may register such home with the State Department of Health on forms provided by the department.

(2) A certificate of registration shall be issued to the applicant for registration who (a) attests to the safety of the home for the care of children, (b) submits a fee of Five Dollars ($5.00), payable to the department, and (c) certifies that no person described in paragraph (a), (b), (c), (d) or (e) of Section 43-20-57(1) resides, works or volunteers in the family child care home.

Any increase in the fee charged by the department under this subsection shall be in accordance with the provisions of Section 41-3-65.

(3) The department shall furnish each applicant for registration a family child care home safety evaluation form to be completed by the applicant and submitted with the registration application.

(4) The certificate of registration shall be renewed annually in the same manner provided for in this section.

(5) A certificate of registration shall be in force for one (1) year after the date of issuance unless revoked pursuant to Sections 43-20-51 through 43-20-65. The certificate shall specify that the registrant may operate a family child care home for five (5) or fewer children. This section shall not be construed to limit the right of the department to enter a registered family child care home for the purpose of assessing compliance with Sections 43-20-51 through 43-20-65 after receiving a complaint against the registrant of such home or in conducting a periodic routine inspection.

(6) The department shall adopt rules and regulations to implement the registration provisions.

**HISTORY: Laws, 1990, ch. 552, § 19; Laws, 2016, ch. 510, § 36, eff from and after July 1, 2016; reenacted without change, Laws, 2020, ch. 473, § 36, eff from and after July 1, 2020.**

**Editor's Notes —** Section 65 of Chapter 510, Laws of 2019, which was the repealer for this section, and which was to have become effective July 1, 2020, was repealed by Section 65 of Chapter 473, Laws of 2020, effective July 1, 2020.

**Amendment Notes —** The 2016 amendment added the last paragraph of (2); and made a minor stylistic change.

The 2020 amendment reenacted the section without change.

# CHAPTER 21.

# YOUTH COURT

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## ORGANIZATION, ADMINISTRATION AND OPERATION

Sec.
43-21-105. Definitions.
43-21-121. Guardian ad litem; appointment of a CASA volunteer.

## § 43-21-103. Construction and purpose.

### JUDICIAL DECISIONS

**I. Under Current Law.**

**1. In general.**

Record revealed a worrisome disregard for the provisions of the Youth Court Act because despite the fact that the mother was not properly before the youth court and the father was not before the youth court at all, the youth court adjudicated their child neglected and ordered them to submit to drug screens. E.K. v. Miss. Dep't of Child Prot. Servs., 249 So. 3d 377, 2018 Miss. LEXIS 323 (Miss. 2018).

## § 43-21-105. Definitions.

The following words and phrases, for purposes of this chapter, shall have the meanings ascribed herein unless the context clearly otherwise requires:

(a) "Youth court" means the Youth Court Division.

(b) "Judge" means the judge of the Youth Court Division.

(c) "Designee" means any person that the judge appoints to perform a duty which this chapter requires to be done by the judge or his designee. The judge may not appoint a person who is involved in law enforcement or who is an employee of the Mississippi Department of Human Services or the Mississippi Department of Child Protection Services to be his designee.

(d) "Child" and "youth" are synonymous, and each means a person who has not reached his eighteenth birthday. A child who has not reached his eighteenth birthday and is on active duty for a branch of the armed services or is married is not considered a "child" or "youth" for the purposes of this chapter.

(e) "Parent" means the father or mother to whom the child has been born, or the father or mother by whom the child has been legally adopted.

(f) "Guardian" means a court-appointed guardian of the person of a child.

(g) "Custodian" means any person having the present care or custody of a child whether such person be a parent or otherwise.

(h) "Legal custodian" means a court-appointed custodian of the child.

(i) "Delinquent child" means a child who has reached his tenth birthday and who has committed a delinquent act.

(j) "Delinquent act" is any act, which if committed by an adult, is designated as a crime under state or federal law, or municipal or county ordinance other than offenses punishable by life imprisonment or death. A delinquent act includes escape from lawful detention and violations of the Uniform Controlled Substances Law and violent behavior.

(k) "Child in need of supervision" means a child who has reached his seventh birthday and is in need of treatment or rehabilitation because the child:

(i) Is habitually disobedient of reasonable and lawful commands of his parent, guardian or custodian and is ungovernable; or

(ii) While being required to attend school, willfully and habitually violates the rules thereof or willfully and habitually absents himself therefrom; or

(iii) Runs away from home without good cause; or

(iv) Has committed a delinquent act or acts.

(*l*) "Neglected child" means a child:

(i) Whose parent, guardian or custodian or any person responsible for his care or support, neglects or refuses, when able so to do, to provide for him proper and necessary care or support, or education as required by law, or medical, surgical, or other care necessary for his well-being; however, a parent who withholds medical treatment from any child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall not, for that reason alone, be considered to be neglectful under any provision of this chapter; or

(ii) Who is otherwise without proper care, custody, supervision or support; or

(iii) Who, for any reason, lacks the special care made necessary for him by reason of his mental condition, whether the mental condition is having mental illness or having an intellectual disability; or

(iv) Who, for any reason, lacks the care necessary for his health, morals or well-being.

(m) "Abused child" means a child whose parent, guardian or custodian or any person responsible for his care or support, whether legally obligated to do so or not, has caused or allowed to be caused, upon the child, sexual abuse, sexual exploitation, commercial sexual exploitation, emotional abuse, mental injury, nonaccidental physical injury or other maltreatment. However, physical discipline, including spanking, performed on a child by a parent, guardian or custodian in a reasonable manner shall not be deemed abuse under this section. "Abused child" also means a child who is or has been trafficked within the meaning of the Mississippi Human Trafficking Act by any person, without regard to the relationship of the person to the child.

(n) "Sexual abuse" means obscene or pornographic photographing, filming or depiction of children for commercial purposes, or the rape, molestation, incest, prostitution or other such forms of sexual exploitation of children under circumstances which indicate that the child's health or welfare is harmed or threatened.

(o) "A child in need of special care" means a child with any mental or physical illness that cannot be treated with the dispositional alternatives ordinarily available to the youth court.

(p) A "dependent child" means any child who is not a child in need of supervision, a delinquent child, an abused child or a neglected child, and which child has been voluntarily placed in the custody of the Department of Child Protection Services by his parent, guardian or custodian.

(q) "Custody" means the physical possession of the child by any person.

(r) "Legal custody" means the legal status created by a court order which gives the legal custodian the responsibilities of physical possession of the child and the duty to provide him with food, shelter, education and reasonable medical care, all subject to residual rights and responsibilities of the parent or guardian of the person.

(s) "Detention" means the care of children in physically restrictive facilities.

(t) "Shelter" means care of children in physically nonrestrictive facilities.

(u) "Records involving children" means any of the following from which the child can be identified:

(i) All youth court records as defined in Section 43-21-251;

(ii) All forensic interviews conducted by a child advocacy center in abuse and neglect investigations;

(iii) All law enforcement records as defined in Section 43-21-255;

(iv) All agency records as defined in Section 43-21-257; and

(v) All other documents maintained by any representative of the state, county, municipality or other public agency insofar as they relate to the apprehension, custody, adjudication or disposition of a child who is the subject of a youth court cause.

(v) "Any person responsible for care or support" means the person who is providing for the child at a given time. This term shall include, but is not limited to, stepparents, foster parents, relatives, nonlicensed babysitters or other similar persons responsible for a child and staff of residential care facilities and group homes that are licensed by the Department of Human Services or the Department of Child Protection Services.

(w) The singular includes the plural, the plural the singular and the masculine the feminine when consistent with the intent of this chapter.

(x) "Out-of-home" setting means the temporary supervision or care of children by the staff of licensed day care centers, the staff of public, private and state schools, the staff of juvenile detention facilities, the staff of unlicensed residential care facilities and group homes and the staff of, or individuals representing, churches, civic or social organizations.

(y) "Durable legal custody" means the legal status created by a court order which gives the durable legal custodian the responsibilities of physical possession of the child and the duty to provide him with care, nurture, welfare, food, shelter, education and reasonable medical care. All these duties as enumerated are subject to the residual rights and responsibilities of the natural parent(s) or guardian(s) of the child or children.

(z) "Status offense" means conduct subject to adjudication by the youth court that would not be a crime if committed by an adult.

(aa) "Financially able" means a parent or child who is ineligible for a court-appointed attorney.

(bb) "Assessment" means an individualized examination of a child to determine the child's psychosocial needs and problems, including the type and extent of any mental health, substance abuse or co-occurring mental health and substance abuse disorders and recommendations for treatment. The term includes, but is not limited to, a drug and alcohol, psychological or psychiatric evaluation, records review, clinical interview or the administration of a formal test and instrument.

(cc) "Screening" means a process, with or without the administration of a formal instrument, that is designed to identify a child who is at increased risk of having mental health, substance abuse or co-occurring mental health and substance abuse disorders that warrant immediate attention, intervention or more comprehensive assessment.

(dd) "Durable legal relative guardianship" means the legal status created by a youth court order that conveys the physical and legal custody of a child or children by durable legal guardianship to a relative or fictive kin who is licensed as a foster or resource parent.

(ee) "Relative" means a person related to the child by affinity or consanguinity within the third degree.

(ff) "Fictive kin" means a person not related to the child legally or biologically but who is considered a relative due to a significant, familial-like and ongoing relationship with the child and family.

(gg) "Reasonable efforts" means the exercise of reasonable care and due diligence by the Department of Human Services, the Department of Child Protection Services, or any other appropriate entity or person to use appropriate and available services to prevent the unnecessary removal of the child from the home or provide other services related to meeting the needs of the child and the parents.

(hh) "Commercial sexual exploitation" means any sexual act or crime of a sexual nature, which is committed against a child for financial or economic gain, to obtain a thing of value for quid pro quo exchange of property or for any other purpose.

**HISTORY: Laws, 1979, ch. 506, § 3; Laws, 1980, ch. 550, § 2; Laws, 1985, ch. 486, § 2; Laws, 1986, ch. 416, § 1; Laws, 1991, ch. 537, § 1; Laws, 1991, ch. 539, § 7; Laws, 1993, ch. 560, § 1; Laws, 1994, ch. 591, § 5; Laws, 1994, ch. 607, § 17; Laws, 1996, ch. 323, § 1; Laws, 1998, ch. 516, § 6; Laws, 2001, ch. 358, § 1; Laws, 2005, ch. 471, § 4; Laws, 2010, ch. 476, § 73; Laws, 2013, ch. 426, § 1; Laws, 2016, ch. 362, § 1; Laws, 2016, ch. 438, § 12; Laws, 2017, ch. 427, § 3, eff from and after July 1, 2017; Laws, 2019, ch. 420, § 6, eff from and after July 1, 2019; Laws, 2019, ch. 464, § 1, eff from and after July 1, 2019.**

**Joint Legislative Committee Note** — Section 1 of ch. 362, Laws of 2016, effective from and after passage (approved April 6, 2016), amended this section. Section 12 of ch. 438, Laws of 2016, effective July 1, 2016 (approved April 18, 2016), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 5, 2016, meeting of the Committee.

Section 6 of Chapter 420, Laws of 2019, effective July 1, 2019 (approved March 28, 2019), amended this section. Section 1 of Chapter 464, Laws of 2019, effective July 1, 2019 (approved April 16, 2019), also amended this section. As set out above, this section reflects the language of Section 1 of Chapter 464, Laws of 2019, which contains language that specifically provides that it supersedes § 43-21-105 as amended by Chapter 420, Laws of 2019.

**Amendment Notes —** The first 2016 amendment (ch. 362) inserted "or who is an employee of the Mississippi Department of Human Services" in (c); and added the last sentence of (m).

The second 2016 amendment (ch. 438) added (bb) and (cc).

The 2017 amendment added (dd) through (gg).

The first 2019 amendment (ch. 420) inserted "or the Mississippi Department of Child Protection Services" in (c); inserted "commercial sexual exploitation" in the first sentence of (m); substituted "Department of Child Protection Services" for "Department of Human Services" in (p); added "or Department of Child Protection Services" at the end of (v); and added (hh).

The second 2019 amendment (ch. 464) inserted "or the Mississippi Department of Child Protection Services" in (c); inserted "commercial sexual exploitation" in the first sentence of (m); substituted "Department of Child Protection Services" for "Department of Human Services" in (p); rewrote (u)(ii), which read: "All social records as defined in Section 43-21-253"; added "or Department of Child Protection Services" at the end of (v); and added (hh).

**Cross References —** Mississippi Human Trafficking Act, see §§ 97-3-54 through 97-3-54.9.

## JUDICIAL DECISIONS

### ANALYSIS

I. Under Current Law.

1. Jurisdiction — In general.
6. Neglected.
8. Abused.

### I. Under Current Law.

**1. Jurisdiction — In general.**

Youth court had no jurisdiction to adjudicate a mother's son as a child in need of supervision and the mother's two other sons as sexually abused because neither the mother nor any of the children were served a summons or were present at a hearing, and the children could not waive service, so the adjudications were void. Doe v. Hinds Cty. Youth Court (In re M.M.), 220 So. 3d 285, 2017 Miss. App. LEXIS 320 (Miss. Ct. App. 2017).

**6. Neglected.**

Petition alleging a child was neglected was insufficient because there were no facts to "show" that she was "a neglected child"; in the absence of a causal connection between the facts alleged in the petition and the petition's charge of neglect, the petition was legally insufficient to provide notice to the child, the mother, or the father of the particular circumstances that were to be inquired into at the adjudicatory proceedings. E.K. v. Miss. Dep't of Child Prot. Servs., 249 So. 3d 377, 2018 Miss. LEXIS 323 (Miss. 2018).

Evidence failed to demonstrate that a child was neglected because no evidence was offered to show that the mother's fear of the father led to the child being neglected, and evidence of the mother's positive test for marijuana usage was not shown to have affected the child; the mother's marijuana usage did not negate the requirement of a causal connection between the drug usage and the neglect. E.K. v. Miss. Dep't of Child Prot. Servs., 249 So. 3d 377, 2018 Miss. LEXIS 323 (Miss. 2018).

In a case involving evidence of neglect of a sibling, the supreme court would adopt the doctrine of "anticipatory" or "potential" neglect, especially where the neglect of a sibling had been determined a mere month prior to the other child's birth; the Mississippi Youth Court Act's definition of a "neglected child" is sufficiently comprehensive to include a newborn child whose parents have previously demonstrated that they are unwilling or unable to provide proper care for the child. S.M. v. Miss. Dep't of Human Servs. (In the Interest of N.M.), 215 So. 3d 1007, 2017 Miss. App. LEXIS 202 (Miss. Ct. App. 2017).

**8. Abused.**

Youth court properly adjudicated a father's children as abused because the father's alleged disciplinary methods, which included punching, "body slamming," and kicking, presented an unreasonable danger to the children, the children were generally consistent in their testimony, their account was not improbable on its face or contradicted by overwhelming evidence, and the "discipline" was alleged to be frequent and persistent over a long period of time and was not an isolated incident. Hawkins v. Youth Court of Desoto Cty. (In re V.M.H.), 223 So. 3d 187, 2017 Miss. App. LEXIS 399 (Miss. Ct. App. 2017).

It was not manifestly wrong or clearly erroneous for the chancery court to have concerns regarding the wife's allegations of child abuse since, under subsection (m), spanking had to be reasonable; neither the wife nor her trial counsel objected to the chancery court's interpretation of the wife's testimony about the husband's parenting or spanking as child abuse or attempted to clarify her statements. Holman v. Holman, 231 So. 3d 183, 2017 Miss. App. LEXIS 180 (Miss. Ct. App.), cert. denied, 229 So. 3d 709, 2017 Miss. LEXIS 464 (Miss. 2017).

State failed to produce sufficient evidence to prove that a child had been sexually abused because it produced no evidence that the child's facially ambiguous statement described abuse since the statement could describe sexual abuse or innocent contact, and no additional evidence was provided to show abuse; the parents provided an innocent explanation, and neither the Mississippi Department of Human Services nor the investigative guardian ad litem discovered evidence of abuse. D.T. v. Hinds Cnty. Youth Court (In re J.T.), 188 So. 3d 1192, 2016 Miss. LEXIS 165 (Miss. 2016).

Evidence was sufficient to support the youth court's order adjudicating a child as sexually abused because the child testified that her stepfather sexually abused her, and the record contained no denial; the youth court considered the child's mental health issues and possible motives but found her allegations credible, and her testimony was sufficient to support its finding. Lewis v. Jackson Cnty. Youth Court (In the Interest of E.G.), 191 So. 3d 763, 2016 Miss. App. LEXIS 178 (Miss. Ct. App. 2016).

## § 43-21-109. Youth court facilities.

**Editor's Notes —** Laws of 2017, ch. 420, § 5, provides:

"SECTION 5. (1) There is hereby created a Community-Based Placement for At-risk Children Pilot Program for the counties of Hinds, Rankin, Madison, Warren, Yazoo, Copiah, DeSoto, Hancock and Coahoma. The purpose of the pilot program is to implement a plan for early intervention by the youth court to reach at-risk children and place the children in community-based homes under youth court supervision.

"(2)(a) For the purposes of this section, 'community home' means a home designated by the youth court judge under this section.

"(b) In order to be designated as a community home, the home must have been approved as being both safe and an environment in which a child will thrive by Child Protective Services before placement of any youth in the home.

"(c) Homes designated as community homes will be recruited in the county in which the youth court has jurisdiction subject to the provisions of this subsection (2).

"(3)(a) Children eligible for placement under the pilot program are those between the ages of ten (10) and fourteen (14) who have been determined by the youth court to be living in an environment that is either:

"(i) Abusive;

"(ii) Neglectful; or

"(iii) That contributes to the delinquency of the child.

"(b) The factors to be used by the youth court in determining the at-risk status of the child may include, but not be limited to, the following:

"(i) Living with a single parent who has apparently either voluntarily or involuntarily lost control of the child;

"(ii) Disciplinary problems at school;

"(iii) Academic problems at school; or

"(iv) Having older siblings from the same environment who have been adjudicated abused, neglected or delinquent.

"(c) Placement under the program will require the consent of:

"(i) The custodial parent;

"(ii) A person in loco parentis to the child; or

"(iii) The duly appointed guardian ad litem of the child.

"(4) Compensation to the community homes for the expenses incurred in the placement shall be for a fair and reasonable amount as determined by the youth court.

"(5) Funding for the pilot program shall consist of:

"(a) Monies appropriated by the Legislature for the purposes of funding the pilot program;

"(b) Monies dedicated by action of the board of supervisors for the purposes of funding the pilot program;

"(c) Monies received from the federal government;

"(d) Donations;

"(e) Monies received from such other sources as may be provided by law; or

"(f) Any combination of funding set forth in this subsection.

"(6)(a) Creation of a pilot program under this section shall be by order of the youth court of a county and solely contingent on committed funding as set forth in this section.

"(b) Any youth court electing to operate a pilot program under this section shall report on the placements made and all expenses incurred under the pilot program to the Administrative Office of Courts not less than every six (6) months, and the Supreme Court shall ensure that the Legislature is informed of the status of the pilot program on at least an annual basis.

"(c) The Administrative Office of Courts shall be responsible for certification of advance funding and continued monitoring of any Community-Based Placement for At-risk Children Program created as a pilot program under the authority of this section."

## § 43-21-121. Guardian ad litem; appointment of a CASA volunteer.

(1) The youth court shall appoint a guardian ad litem for the child:

(a) When a child has no parent, guardian or custodian;

(b) When the youth court cannot acquire personal jurisdiction over a parent, a guardian or a custodian;

(c) When the parent is a minor or a person of unsound mind;

(d) When the parent is indifferent to the interest of the child or if the interests of the child and the parent, considered in the context of the cause, appear to conflict;

(e) In every case involving an abused or neglected child which results in a judicial proceeding; or

(f) In any other instance where the youth court finds appointment of a guardian ad litem to be in the best interest of the child.

(2) The guardian ad litem shall be appointed by the court when custody is ordered or at the first judicial hearing regarding the case, whichever occurs first.

(3) In addition to all other duties required by law, a guardian ad litem shall have the duty to protect the interest of a child for whom he has been

appointed guardian ad litem. The guardian ad litem shall investigate, make recommendations to the court or enter reports as necessary to hold paramount the child's best interest. The guardian ad litem is not an adversary party and the court shall ensure that guardians ad litem perform their duties properly and in the best interest of their wards. The guardian ad litem shall be a competent person who has no adverse interest to the minor. The court shall ensure that the guardian ad litem is adequately instructed on the proper performance of his duties.

(4) The court, including a county court serving as a youth court, may appoint either a suitable attorney or a suitable layman as guardian ad litem. In cases where the court appoints a layman as guardian ad litem, the court shall also appoint an attorney to represent the child. From and after January 1, 1999, in order to be eligible for an appointment as a guardian ad litem, such attorney or layperson must have received child protection and juvenile justice training provided by or approved by the Mississippi Judicial College within the year immediately preceding such appointment. The Mississippi Judicial College shall determine the amount of child protection and juvenile justice training which shall be satisfactory to fulfill the requirements of this section. The Administrative Office of Courts shall maintain a roll of all attorneys and laymen eligible to be appointed as a guardian ad litem under this section and shall enforce the provisions of this subsection.

(5) Upon appointment of a guardian ad litem, the youth court shall continue any pending proceedings for a reasonable time to allow the guardian ad litem to familiarize himself with the matter, consult with counsel and prepare his participation in the cause. The youth court shall issue an order of assignment that grants the guardian ad litem authority to review all relevant documents concerning the minor child and to interview all parties and witnesses involved in proceedings concerning the minor child for whom the guardian ad litem is appointed.

(6) Upon order of the youth court, the guardian ad litem shall be paid a reasonable fee as determined by the youth court judge or referee out of the county general fund as provided under Section 43-21-123. To be eligible for such fee, the guardian ad litem shall submit an accounting of the time spent in performance of his duties to the court.

(7)(a) The court, in its sound discretion, may appoint a volunteer trained layperson to assist children subject to the provisions of this section in addition to the appointment of a guardian ad litem. If the court utilizes his or her discretion as prescribed under this subsection, a volunteer Court-Appointed Special Advocate (CASA) shall be appointed from a program that supervises the volunteer and meets all state and national CASA standards to advocate for the best interests of children in abuse and neglect proceedings. To accomplish the assignment of a CASA volunteer, the court shall issue an order of assignment that shall grant the CASA volunteer the authority, equal to that of the guardian ad litem, to review all relevant documents and to interview all parties and witnesses involved in the proceeding in which he or she is appointed. Except as otherwise ordered by the court, the assignment of a CASA volunteer for a child shall include subsequent proceedings through permanent placement of the child.

(b) Before assigning a CASA volunteer as prescribed under this subsection, the youth court judge shall determine if the volunteer has sufficient qualifications, training and ability to serve as a CASA volunteer, including his or her ability to represent and advocate for the best interests of children assigned to him or her. No volunteer shall be assigned until a comprehensive criminal background check has been conducted.

All CASA volunteers shall:

(i) Be sworn in by a judge of the court;

(ii) Swear or affirm to abide by all laws, regulations, and orders of the court;

(iii) Swear or affirm to advocate what he or she perceives to be in the best interests of the child for whom he or she is assigned in all matters pending before the court;

(iv) Provide independent, factual information to the court regarding the children and cases to which they are assigned;

(v) Advocate on behalf of the children involved in the cases to which they are assigned what they perceive to be in the best interests of the children; and

(vi) Monitor proceedings in cases to which they have been assigned and advise and assist the court in its determination of the best interests of the children involved.

(c) Regarding any case to which a CASA volunteer has been assigned, the CASA volunteer:

(i) Shall be notified by the court of all court proceedings and hearings of any kind pertaining to the child;

(ii) Shall be notified by the Department of Child Protection Services of all administrative review hearings;

(iii) Shall be entitled to attend all court proceedings and hearings of any kind pertaining to the child;

(iv) May be called as a witness in the proceedings by any party or by the court and may request of the court the opportunity to appear as a witness; and

(v) Shall be given access to all portions of the court record relating to proceedings pertaining to the child and the child's family.

(d) Upon application to the court and notice to all parties, the court shall grant the CASA volunteer access to other information, including the department records as provided in Section 43-21-261, relating to the child and the child's family and to other matters involved in the proceeding in which he or she is appointed. All records and information requested or reviewed by the CASA volunteer in the course of his or her assignment shall be deemed confidential and shall not be disclosed by him except pursuant to court order. All records and information shall only be disclosed as directed by court order and shall be disclosed as directed by court order and shall be subject to whatever protective order the court deems appropriate.

**HISTORY: Laws, 1979, ch. 506, § 11; Laws, 1980, ch. 550, § 5; Laws, 1997, ch. 440, § 5; Laws, 1998, ch. 367, § 3; Laws, 1998, ch. 516, § 9; Laws, 1999, ch. 329, § 1; Laws, 2015, ch. 493, § 1; Laws, 2017, ch. 420, § 1, eff from and after July 1, 2017; Laws, 2019, ch. 464, § 4, eff from and after July 1, 2019.**

**Amendment Notes —** The 2017 amendment, in (7), added the second through fourth sentences of (a), and added (b) through (d).

The 2019 amendment substituted "ensure" for "insure" in the third and last sentences of (3); added the last sentence of (5); and substituted "Department of Child Protection Services" for "Department of Human Services" in (7)(c)(ii).

### JUDICIAL DECISIONS

**1. In general.**

Trial court did not abuse its discretion by limiting a guardian ad litem's participation, but, because the appointment was mandatory after the wife's allegations of child abuse by the husband, the chancellor was required at least to consider the guardian ad litem's report and recommendations. Accordingly, reversal of the judgment and remand of the case was necessary for the chancellor to make findings of fact and conclusions of law taking into consideration the guardian ad litem's report and recommendations. Barber v. Barber, 288 So. 3d 325, 2020 Miss. LEXIS 16 (Miss. 2020).

Chancellor was within his discretion not to appoint a GAL based solely on a doctor's concern that unspecified actions by the mother could emotionally hard the child. Riley v. Heisinger, — So. 3d —, 2020 Miss. App. LEXIS 486 (Miss. Ct. App. Aug. 25, 2020).

## JURISDICTION

Sec.
43-21-155. Venue.
43-21-159. Transfer of cases from other courts.

## § 43-21-151. Jurisdiction.

### JUDICIAL DECISIONS

**ANALYSIS**

I. Under Current Law.

3. Construction and application.
4. Original jurisdiction.

**I. Under Current Law.**

**3. Construction and application.**

In a case involving evidence of neglect of a sibling, the supreme court would adopt the doctrine of "anticipatory" or "potential" neglect, especially where the neglect of a sibling had been determined a mere month prior to the other child's birth; the Mississippi Youth Court Act's definition of a "neglected child" is sufficiently comprehensive to include a newborn child whose parents have previously demonstrated that they are unwilling or unable to provide proper care for the child. S.M. v. Miss. Dep't of Human Servs. (In the Interest of N.M.), 215 So. 3d 1007, 2017 Miss. App. LEXIS 202 (Miss. Ct. App. 2017).

Youth court exceeded its authority in denying parents' motion to set aside a judgment adjudicating their child as a child in need of special care because the Department of Human Services petition did not state a basis for invoking its jurisdiction; there was no specific allegation that the child had any mental or physical illness, and thus, the youth court based its decision to place the child in custody as a child in need of special care upon evidence of neglect of the parents' other children.

S.M. v. Miss. Dep't of Human Servs. (In the Interest of N.M.), 215 So. 3d 1007, 2017 Miss. App. LEXIS 202 (Miss. Ct. App. 2017).

Because a mother assigned the mother's rights as payee to the Mississippi Department of Human Services by participation in Mississippi's Aid to Families with Dependent Children public assistance program prior to a youth court's reunification of custody order, a chancellor did not err in ordering disbursement of the collected child support to the various custodial family members. Vance v. Miss. Dep't of Human Servs. (Child Support Div.), 203 So. 3d 11, 2016 Miss. App. LEXIS 667 (Miss. Ct. App. 2016).

**4. Original jurisdiction.**

Circuit court lacked jurisdiction over defendant juveniles' case because there was not a transfer of jurisdiction to the circuit court from the youth court; the youth court possessed exclusive original jurisdiction over the proceeding because both defendants were seventeen years old at the time of the offense, and a youth-court transfer order or transcript from a hearing on the matter did not appear in the record. Meadows v. State, 217 So. 3d 772, 2017 Miss. App. LEXIS 87 (Miss. Ct. App. 2017).

## § 43-21-155. Venue.

(1) If a child is alleged to be a delinquent child or a child in need of supervision, the proceedings shall be commenced in any county where any of the alleged acts are said to have occurred. After adjudication, the youth court may, in the best interest of the child, transfer the case at any stage of the proceeding for disposition to the county where the child resides or to a county where a youth court has previously acquired jurisdiction.

(2) If a child is alleged to be an abused or neglected child, the proceedings shall be commenced in the county where the child's custodian resides or in the county where the child is present when the report is made to the intake unit. After adjudication the youth court may transfer the case at any stage of the proceeding for disposition to the county where the child resides or to a county where a youth court has previously acquired jurisdiction if that is in the best interest of the child.

**HISTORY: Laws, 1979, ch. 506, § 17; Laws, 1999, ch. 329, § 2, eff from and after July 1, 1999; Laws, 2019, ch. 464, § 8, eff from and after July 1, 2019.**

**Amendment Notes —** The 2019 amendment added the last sentence of (2).

## § 43-21-157. Transfer of jurisdiction to other courts.

### JUDICIAL DECISIONS

### I. Under Current Law.

**1. In general.**

Circuit court lacked jurisdiction over defendant juveniles' case because there was not a transfer of jurisdiction to the circuit court from the youth court; the youth court possessed exclusive original jurisdiction over the proceeding because both defendants were seventeen years old at the time of the offense, and a youth-court transfer order or transcript from a hearing on the matter did not appear in the record. Meadows v. State, 217 So. 3d 772, 2017 Miss. App. LEXIS 87 (Miss. Ct. App. 2017).

## § 43-21-159. Transfer of cases from other courts.

(1) When a person appears before a court other than the youth court, and it is determined that the person is a child under jurisdiction of the youth court, such court shall, unless the jurisdiction of the offense has been transferred to such court as provided in this chapter, or unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted, immediately dismiss the proceeding without prejudice and forward all documents pertaining to the cause to the youth court; and all entries in permanent records shall be expunged. The youth court shall have the power to order and supervise the expunction or the destruction of such records in accordance with Section 43-21-265. Upon petition therefor, the youth court shall expunge the record of any case within its jurisdiction in which an arrest was made, the person arrested was released and the case was dismissed or the charges were dropped, there was no disposition of such case, or the person was found not delinquent.

In cases where the child is charged with a hunting or fishing violation or a traffic violation, whether it be any state or federal law, a violation of the Mississippi Implied Consent Law, or municipal ordinance or county resolution, or where the child is charged with a violation of Section 67-3-70, the appropriate criminal court shall proceed to dispose of the same in the same manner as for other adult offenders and it shall not be necessary to transfer the case to the youth court of the county. However, unless the cause has been transferred, or unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted, the youth court shall have power on its own motion to remove jurisdiction from any criminal court of any offense including a hunting or fishing violation, a traffic violation, a violation of the Mississippi Implied Consent Law, or a violation of Section 67-3-70, committed by a child in a matter under the jurisdiction of the youth court and proceed therewith in accordance with the provisions of this chapter.

(2) After conviction and sentence of any child by any other court having original jurisdiction on a misdemeanor charge, and within the time allowed for an appeal of such conviction and sentence, the youth court of the county shall have the full power to stay the execution of the sentence and to release the child on good behavior or on other order as the youth court may see fit to make unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted. When a child is convicted of a misdemeanor and is committed to, incarcerated in or imprisoned in a jail or other place of detention by a criminal court having proper jurisdiction of such charge, such court shall notify the youth court judge or the judge's designee of the conviction and sentence prior to the commencement of such incarceration. The youth court shall have the power to order and supervise the destruction of any records involving children maintained by the criminal court in accordance with Section 43-21-265. However, the youth court shall have the power to set aside a judgment of any other court rendered in any

matter over which the youth court has exclusive original jurisdiction, to expunge or destroy the records thereof in accordance with Section 43-21-265, and to order a refund of fines and costs.

(3) Nothing in subsection (1) or (2) shall apply to a youth who has a pending charge or a conviction for any crime over which circuit court has original jurisdiction.

(4) In any case wherein the defendant is a child as defined in this chapter and of which the circuit court has original jurisdiction, the circuit judge, upon a finding that it would be in the best interest of such child and in the interest of justice, may at any stage of the proceedings prior to the attachment of jeopardy transfer such proceedings to the youth court for further proceedings unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted or has previously been convicted of a crime which was in original circuit court jurisdiction, and the youth court shall, upon acquiring jurisdiction, proceed as provided in this chapter for the adjudication and disposition of delinquent child proceeding proceedings. If the case is not transferred to the youth court and the youth is convicted of a crime by any circuit court, the trial judge shall sentence the youth as though such youth was an adult. The circuit court shall not have the authority to commit such child to the custody of the Department of Youth Services for placement in a state-supported training school.

(5) In no event shall a court sentence an offender over the age of eighteen (18) to the custody of the Division of Youth Services for placement in a state-supported training school.

(6) When a child's driver's license is suspended by the youth court for any reason, the clerk of the youth court shall report the suspension, without a court order under Section 43-21-261, to the Commissioner of Public Safety in the same manner as such suspensions are reported in cases involving adults.

(7) No offense involving the use or possession of a firearm by a child who has reached his fifteenth birthday and which, if committed by an adult would be a felony, shall be transferred to the youth court.

**HISTORY: Laws, 1979, ch. 506, § 19; Laws, 1980, ch. 550, § 7; Laws, 1983, ch. 435, § 9; Laws, 1985, ch. 431, § 5; Laws, 1986, ch. 467, § 2; Laws, 1994, ch. 595, § 3; Laws, 1996, ch. 454, § 2; Laws, 1996, ch. 527, § 17; Laws, 2003, ch. 557, § 1; Laws, 2012, ch. 564, § 1, eff from and after July 1, 2012; Laws, 2019, ch. 466, § 40, eff from and after July 1, 2019.**

**Editor's Note —** Laws of 2019, ch. 466, § 1 provides as follows:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

**Amendment Notes —** The 2019 amendment added "or the person was found not delinquent" at the end of the first paragraph of (1), and made a related change.

**Cross References —** Provision whereby person who has been convicted of a misdemeanor, and who is first offender, may petition the court to have his record expunged, see § 99-19-71.

## JUDICIAL DECISIONS

### I. Under Current Law.

**2. Particular applications.**

Circuit court lacked jurisdiction over defendant juveniles' case because there was not a transfer of jurisdiction to the circuit court from the youth court; the youth court possessed exclusive original jurisdiction over the proceeding because both defendants were seventeen years old at the time of the offense, and a youth-court transfer order or transcript from a hearing on the matter did not appear in the record. Meadows v. State, 217 So. 3d 772, 2017 Miss. App. LEXIS 87 (Miss. Ct. App. 2017).

## PROVISIONS APPLICABLE TO ALL PROCEEDINGS

Sec.

43-21-201. Representation by counsel; youth court-appointed attorneys required to receive juvenile justice training; exemption; duties of youth court counsel.
43-21-203. Conduct of proceedings.
43-21-207. Admissibility of statements made by or information obtained from child during screening, assessment or treatment.

## § 43-21-201. Representation by counsel; youth court-appointed attorneys required to receive juvenile justice training; exemption; duties of youth court counsel.

(1) Each party shall have the right to be represented by counsel at all stages of the proceedings including, but not limited to, detention, adjudicatory and disposition hearings and parole or probation revocation proceedings. In delinquency matters the court shall appoint legal defense counsel who is not also a guardian ad litem for the same child. If the party is a child, the child shall be represented by counsel at all critical stages: detention, adjudicatory and disposition hearings; parole or probation revocation proceedings; and post-disposition matters. If indigent, the child shall have the right to have counsel appointed for him by the youth court.

(2) When a party first appears before the youth court, the judge shall ascertain whether he is represented by counsel and, if not, inform him of his rights including his right to counsel. If the court determines that a parent or guardian who is a party in an abuse, neglect or termination of parental rights proceeding is indigent, the youth court judge may appoint counsel to represent the indigent parent or guardian in the proceeding.

(3) An attorney appointed to represent a delinquent child shall be required to complete annual juvenile justice training that is approved by the Mississippi Office of State Public Defender and the Mississippi Commission on Continuing Legal Education. An attorney appointed to represent a parent or guardian in an abuse, neglect or termination of parental rights proceeding shall be required to complete annual training that is approved by the Office of State Public Defender and the Mississippi Commission on Continuing Legal Education. The Mississippi Office of State Public Defender and the Mississippi Commission on Continuing Legal Education shall determine the amount of

juvenile justice training and continuing education required to fulfill the requirements of this subsection. The State Public Defender shall maintain a roll of attorneys who have complied with the training requirements and shall enforce the provisions of this subsection. Should an attorney fail to complete the annual training requirement or fail to attend the required training within six (6) months of being appointed to a youth court case, the attorney shall be disqualified to serve and the youth court shall immediately terminate the representation and appoint another attorney. Attorneys appointed by a youth court to five (5) or fewer cases a year are exempt from the requirements of this subsection.

(4) The child's attorney shall owe the same duties of undivided loyalty, confidentiality and competent representation to the child or minor as is due an adult client pursuant to the Mississippi Rules of Professional Conduct.

(5) An attorney shall enter his appearance on behalf of a party in the proceeding by filing a written notice of appearance with the youth court, by filing a pleading, notice or motion signed by counsel or by appearing in open court and advising the youth court that he is representing a party. After counsel has entered his appearance, he shall be served with copies of all subsequent pleadings, motions and notices required to be served on the party he represents. An attorney who has entered his appearance shall not be permitted to withdraw from the case until a timely appeal, if any, has been decided, except by leave of the court then exercising jurisdiction of the cause after notice of his intended withdrawal is served by him on the party he represents.

(6) Each designee appointed by a youth court judge shall be subject to the Code of Judicial Conduct and shall govern himself or herself accordingly.

**HISTORY: Laws, 1979, ch. 506, § 20; Laws, 1980, ch. 550, § 8; Laws, 2006, ch. 539, § 1; Laws, 2007, ch. 347, § 1; Laws, 2007, ch. 481, § 1; Laws, 2009, ch. 536, § 1; Laws, 2016, ch. 505, § 1, eff from and after July 1, 2016.**

**Amendment Notes —** The 2016 amendment added the last sentence in (2); and in (3), substituted "Office of State Public Defender and" for "Judicial College or" in the first sentence, added the second sentence, substituted "Office of State Public Defender" for Judicial College" in the third sentence, and substituted "State Public Defender" for Administrative Office of Courts" in the fourth sentence.

## § 43-21-203. Conduct of proceedings.

(1) The youth court shall be in session at all times.

(2) All cases involving children shall be heard at any place the judge deems suitable but separately from the trial of cases involving adults.

(3) Hearings in all cases involving children shall be conducted without a jury and may be recessed from time to time.

(4) All hearings shall be conducted under such rules of evidence and rules of court as may comply with applicable constitutional standards.

(5) No proceeding by the youth court in cases involving children shall be a criminal proceeding but shall be entirely of a civil nature.

(6) The general public shall be excluded from the hearing, and only those persons shall be admitted who are found by the youth court to have a direct interest in the cause or work of the youth court. Any person found by the youth court to have a direct interest in the cause shall have the right to appear and be represented by legal counsel.

(7) In all hearings, a complete record of all evidence shall be taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.

(8) The youth court may exclude the attendance of a child from a hearing in neglect and abuse cases with consent of the child's counsel. The youth court may exclude the attendance of a child from any portion of a disposition hearing that would be injurious to the best interest of the child in delinquency and children in need of supervision cases with consent of the child's counsel.

(9) All parties to a youth court cause shall have the right at any hearing in which an investigation, record or report is admitted in evidence:

(a) To subpoena, confront and examine the person who prepared or furnished data for the report; and

(b) To introduce evidence controverting the contents of the report.

(10) Except as provided by Section 43-21-561(5) or as otherwise provided by this chapter, the disposition of a child's cause or any evidence given in the youth court in any proceedings concerning the child shall not be admissible against the child in any case or proceeding in any court other than a youth court.

(11) An order or ruling of the youth court judge delivered orally must be reduced to writing within forty-eight (48) hours, excluding Saturdays, Sundays and statutory state holidays.

**HISTORY: Laws, 1979, ch. 506, § 21; Laws, 1980, ch. 550, § 9, eff from and after July 1, 1980; Laws, 2019, ch. 464, § 6, eff from and after July 1, 2019.**

**Amendment Notes —** The 2019 amendment deleted "except detention and shelter hearings under Section 43-21-309" following "In all hearings" in (7); and added (11).

## JUDICIAL DECISIONS

**3. Applicability of Rules of Evidence.**

To the extent that the supreme court or the court of appeals has held that the Mississippi Rules of Evidence have some diminished force in youth-court adjudications, the supreme court overrules the cases. When the youth court adjudicates the ultimate issue of abuse, the Rules must be given full effect. D.T. v. Hinds Cnty. Youth Court (In re J.T.), 188 So. 3d 1192, 2016 Miss. LEXIS 165 (Miss. 2016).

Youth court erred in disregarding the Mississippi Rules of Evidence because Miss. R. Evid. 1101(a) applied the Rules to all proceedings unless otherwise provided, and Rule 1101(b) did not except youth-court adjudication hearings; both the rules of court and the Mississippi Code dictate that the Mississippi Rules of Evidence apply to abuse adjudications in youth court. D.T. v. Hinds Cnty. Youth Court (In re J.T.), 188 So. 3d 1192, 2016 Miss. LEXIS 165 (Miss. 2016).

Specific rules have been promulgated by the supreme court to govern youth-court proceedings, and where those specific provisions depart from the Mississippi Rules of Evidence, the specific youth-court rule applies; but where no specific youth-court rule supersedes the Mississippi Rules of

Evidence, the Rules apply with full force and effect, and neither the Rules of Evidence, nor the Uniform Youth Court Rules allow ad hoc amendment by trial judges. D.T. v. Hinds Cnty. Youth Court (In re J.T.), 188 So. 3d 1192, 2016 Miss. LEXIS 165 (Miss. 2016).

## § 43-21-205. Court costs and fees.

### OPINIONS OF THE ATTORNEY GENERAL

When the Department of Human Services (DHS) calls an expert witness in a parental termination case, the expense incurred would be the responsibility of the department; however, if an expert witness is sought on the motion of the guardian ad litem or the court, and the court so orders, any expert witness fee or expense would be borne by the county, not by DHS. Ward, May 4, 1999, A.G. Op. #99-0175.

## § 43-21-207. Admissibility of statements made by or information obtained from child during screening, assessment or treatment.

(1) No statements, admissions or confessions made by or incriminatory information obtained from a child in the course of a screening or assessment that is undertaken in conjunction with any proceedings under this chapter, including, but not limited to, that which is court-ordered, shall be admitted into evidence against the child on the issue of whether the child committed a delinquent act under the Youth Court Act or on the issue of guilt in any criminal proceedings.

(2) The provisions of subsection (1) of this section are in addition to and do not override any existing statutory and constitutional prohibition on the admission into evidence in delinquency or criminal proceedings of information obtained during screening, assessment or treatment.

**HISTORY: Laws, 2016, ch. 438, § 11, eff from and after July 1, 2016.**

**Editor's Notes** — Laws of 2016, ch. 438, § 16, provides:

"SECTION 16. Sections 1 through 8 and Section 11 of this act shall be codified in Chapter 21, Title 43, Mississippi Code of 1972."

Sections 1 through 8 and Section 11 of Chapter 438, Laws of 2016, have been codified as Sections 43-21-901 through 43-21-915 and Section 43-21-207, respectively.

Section 43-21-901 provides: "Sections 43-21-901 through 43-21-915 and Section 43-21-207 shall be cited as the "Mississippi Juvenile Detention Facilities Licensing Act."

**Cross References** — Assessment and screening defined, see § 43-21-105.

## RECORDS

Sec.
43-21-257. Agency records.
43-21-261. Disclosure of records.

## § 43-21-251. Court records.

### JUDICIAL DECISIONS

#### I. Under Current Law.

**1. In general.**

Juvenile's required registration as a sex offender, following his adjudication of delinquency for sexual battery, did not violate the Youth Court Law's confidentiality requirement. The names and addresses of juveniles adjudicated delinquent for sexual battery were exempted from the Youth Court Law's confidentiality requirement for the purposes of registration as a sex offender. L.B.C. v. Forrest Cty. Youth Court, — So. 3d —, 2017 Miss. LEXIS 443 (Miss. Nov. 30, 2017).

## § 43-21-257. Agency records.

(1) Unless otherwise provided in this section, any record involving children, including valid and invalid complaints, and the contents thereof maintained by the Department of Human Services or the Department of Child Protection Services, or any other state agency, shall be kept confidential and shall not be disclosed except as provided in Section 43-21-261.

(2) The Office of Youth Services shall maintain a state central registry containing the number and disposition of all cases together with such other useful information regarding those cases as may be requested and is obtainable from the records of the youth court. The Office of Youth Services shall annually publish a statistical record of the number and disposition of all cases, but the names or identity of any children shall not be disclosed in the reports or records. The Office of Youth Services shall adopt such rules as may be necessary to carry out this subsection. The central registry files and the contents thereof shall be confidential and shall not be open to public inspection. Any person who discloses or encourages the disclosure of any record involving children from the central registry shall be subject to the penalty in Section 43-21-267. The youth court shall furnish, upon forms provided by the Office of Youth Services, the necessary information, and these completed forms shall be forwarded to the Office of Youth Services. The Department of Human Services and its employees are exempt from any civil liability as a result of any action taken pursuant to the compilation or release of information on the central registry under this section and any other applicable section of this code, unless determined that an employee has willfully and maliciously violated the rules and administrative procedures of the department pertaining to the central registry or any section of this code. If an employee is determined to have willfully and maliciously performed such a violation, said employee shall not be exempt from civil liability in this regard.

(3) The Department of Child Protection Services shall maintain a state central registry on neglect and abuse cases containing (a) the name, address and age of each child, (b) the nature of the harm reported, (c) the name and address of the person responsible for the care of the child, and (d) the name and address of the substantiated perpetrator of the harm reported. "Substantiated perpetrator" shall be defined as an individual who has committed an act(s) of

sexual abuse or physical abuse that would otherwise be deemed as a felony or any child neglect that would be deemed as a threat to life. A name is to be added to the registry only based upon a criminal conviction or an adjudication by a youth court judge or court of competent jurisdiction, ordering that the name of the perpetrator be listed on the central registry. The central registry shall be confidential and shall not be open to public inspection. Any person who discloses or encourages the disclosure of any record involving children from the central registry without following the rules and administrative procedures of the department shall be subject to the penalty in Section 43-21-267. The Department of Child Protection Services and its employees are exempt from any civil liability as a result of any action taken pursuant to the compilation or release of information on the central registry under this section and any other applicable section of this code, unless determined that an employee has willfully and maliciously violated the rules and administrative procedures of the department pertaining to the central registry or any section of this code. If an employee is determined to have willfully and maliciously performed such a violation, said employee shall not be exempt from civil liability in this regard.

(4) The Mississippi State Department of Health may release the findings of investigations into allegations of abuse within licensed day care centers made under the provisions of Section 43-21-353(8) to any parent of a child who is enrolled in the day care center at the time of the alleged abuse or at the time the request for information is made. The findings of any such investigation may also be released to parents who are considering placing children in the day care center. No information concerning those investigations may contain the names or identifying information of individual children.

The Department of Health shall not be held civilly liable for the release of information on any findings, recommendations or actions taken pursuant to investigations of abuse that have been conducted under Section 43-21-353(8).

**HISTORY: Laws, 1979, ch. 506, § 26; Laws, 1993, ch. 450, § 1; Laws, 1994, ch. 591, § 1; Laws, 1999, ch. 329, § 3; Laws, 2000, ch. 436, § 1; Laws, 2002, ch. 509, § 2; Laws, 2003, ch. 489, § 1, eff from and after passage (approved Mar. 28, 2003); Laws, 2019, ch. 464, § 12, eff from and after July 1, 2019; Laws, 2019, ch. 473, § 2, eff from and after July 1, 2019.**

**Joint Legislative Committee Note —** Section 12 of Chapter 464, Laws of 2019, effective July 1, 2019, (approved at 10:02 a.m. on April 16, 2019), amended this section. Section 2 of Chapter 473, Laws of 2019, effective July 1, 2019 (approved at 10:20 a.m. on April 16, 2019), also amended this section. As set out above, this section reflects the language of Section 2 of Chapter 473, Laws of 2019, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective date and the approval date of the amendments are the same, the amendment with the latest approval time supersedes all other amendments to the same section approved on an earlier date and time.

**Amendment Notes —** The first 2019 amendment (ch. 464) inserted "or the Department of Child Protection Services" in (1); added the last two sentences of (2); in (3), substituted "Department of Child Protection Services" for "Department of Human Services" twice, deleted "as determined upon investigation by the Office of Family and Children's Services" at the end of the second sentence, in the third sentence, substituted "A name is to be added to the registry only based upon" for "'Substantiation' for the purposes of the Mississippi Department of Human Services Central Registry shall require" at the beginning, and deleted "pending due process" at the end, and deleted the former fourth sentence, which read: "The Department of Human Services shall adopt such rules and administrative procedures, especially those procedures to afford due process to individuals who have been named as substantiated perpetrators before the release of their name from the central registry, as may be necessary to carry out this subsection"; and made minor stylistic changes.

The second 2019 amendment (ch. 473) inserted "or the Department of Child Protection Services" in (1); added the last two sentences of (2); in (3), substituted "Department of Child Protection Services" for "Department of Human Services" twice, deleted "as determined upon investigation by the Office of Family and Children's Services" at the end of the second sentence, in the third sentence, substituted "A name is to be added to the registry only based upon" for "'Substantiation' for the purposes of the Mississippi Department of Human Services Central Registry shall require" at the beginning, and deleted "pending due process" at the end, and deleted the former fourth sentence, which read: "The Department of Human Services shall adopt such rules and administrative procedures, especially those procedures to afford due process to individuals who have been named as substantiated perpetrators before the release of their name from the central registry, as may be necessary to carry out this subsection"; and made minor stylistic changes.

## § 43-21-261. Disclosure of records.

(1) Except as otherwise provided in this section, records involving children shall not be disclosed, other than to necessary staff or officials of the youth court, a guardian ad litem appointed to a child by the court, or a Court-Appointed Special Advocate (CASA) volunteer who may be assigned in an abuse and neglect case, except pursuant to an order of the youth court specifying the person or persons to whom the records may be disclosed, the extent of the records which may be disclosed and the purpose of the disclosure. Such court orders for disclosure shall be limited to those instances in which the youth court concludes, in its discretion, that disclosure is required for the best interests of the child, the public safety, the functioning of the youth court, or to identify a person who knowingly made a false allegation of child abuse or neglect, and then only to the following persons:

(a) The judge of another youth court or member of another youth court staff;

(b) The court of the parties in a child custody or adoption cause in another court;

(c) A judge of any other court or members of another court staff, including the chancery court that ordered a forensic interview;

(d) Representatives of a public or private agency providing supervision or having custody of the child under order of the youth court;

(e) Any person engaged in a bona fide research purpose, provided that no information identifying the subject of the records shall be made available to the researcher unless it is absolutely essential to the research purpose and the judge gives prior written approval, and the child, through his or her representative, gives permission to release the information;

(f) The Mississippi Department of Employment Security, or its duly authorized representatives, for the purpose of a child's enrollment into the

Job Corps Training Program as authorized by Title IV of the Comprehensive Employment Training Act of 1973 (29 USCS Section 923 et seq.). However, no records, reports, investigations or information derived therefrom pertaining to child abuse or neglect shall be disclosed;

(g) Any person pursuant to a finding by a judge of the youth court of compelling circumstances affecting the health, safety or well-being of a child and that such disclosure is in the best interests of the child or an adult who was formerly the subject of a youth court delinquency proceeding;

(h) A person who was the subject of a knowingly made false allegation of child abuse or neglect which has resulted in a conviction of a perpetrator in accordance with Section 97-35-47 or which allegation was referred by the Department of Child Protection Services to a prosecutor or law enforcement official in accordance with the provisions of Section 43-21-353(4).

Law enforcement agencies may disclose information to the public concerning the taking of a child into custody for the commission of a delinquent act without the necessity of an order from the youth court. The information released shall not identify the child or his address unless the information involves a child convicted as an adult.

(2) Any records involving children which are disclosed under an order of the youth court or pursuant to the terms of this section and the contents thereof shall be kept confidential by the person or agency to whom the record is disclosed unless otherwise provided in the order. Any further disclosure of any records involving children shall be made only under an order of the youth court as provided in this section.

(3) Upon request, the parent, guardian or custodian of the child who is the subject of a youth court cause or any attorney for such parent, guardian or custodian, shall have the right to inspect any record, report or investigation relevant to a matter to be heard by a youth court, except that the identity of the reporter shall not be released, nor the name of any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person. The attorney for the parent, guardian or custodian of the child, upon request, shall be provided a copy of any record, report or investigation relevant to a matter to be heard by a youth court, but the identity of the reporter must be redacted and the name of any other person must also be redacted if the person or agency making the information available finds that disclosure of the information would be likely to endanger the life, safety or well-being of the person. A record provided to the attorney under this section must remain in the attorney's control and the attorney may not provide copies or access to another person or entity without prior consent of a court with appropriate jurisdiction.

(4) Upon request, the child who is the subject of a youth court cause shall have the right to have his counsel inspect and copy any record, report or investigation which is filed with the youth court or which is to be considered by the youth court at a hearing.

(5)(a) The youth court prosecutor or prosecutors, the county attorney, the district attorney, the youth court defender or defenders, or any attorney representing a child shall have the right to inspect and copy any law enforcement record involving children.

(b) The Department of Child Protection Services shall disclose to a county prosecuting attorney or district attorney any and all records resulting from an investigation into suspected child abuse or neglect when the case has been referred by the Department of Child Protection Services to the county prosecuting attorney or district attorney for criminal prosecution.

(c) Agency records made confidential under the provisions of this section may be disclosed to a court of competent jurisdiction.

(d) Records involving children shall be disclosed to the Division of Victim Compensation of the Office of the Attorney General upon the division's request without order of the youth court for purposes of determination of eligibility for victim compensation benefits.

(6) Information concerning an investigation into a report of child abuse or child neglect may be disclosed by the Department of Child Protection Services without order of the youth court to any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer, or a public or private school employee making that report pursuant to Section 43-21-353(1) if the reporter has a continuing professional relationship with the child and a need for such information in order to protect or treat the child.

(7) Information concerning an investigation into a report of child abuse or child neglect may be disclosed without further order of the youth court to any interagency child abuse task force established in any county or municipality by order of the youth court of that county or municipality.

(8) Names and addresses of juveniles twice adjudicated as delinquent for an act which would be a felony if committed by an adult or for the unlawful possession of a firearm shall not be held confidential and shall be made available to the public.

(9) Names and addresses of juveniles adjudicated as delinquent for murder, manslaughter, burglary, arson, armed robbery, aggravated assault, any sex offense as defined in Section 45-33-23, for any violation of Section 41-29-139(a)(1) or for any violation of Section 63-11-30, shall not be held confidential and shall be made available to the public.

(10) The judges of the circuit and county courts, and presentence investigators for the circuit courts, as provided in Section 47-7-9, shall have the right to inspect any youth court records of a person convicted of a crime for sentencing purposes only.

(11) The victim of an offense committed by a child who is the subject of a youth court cause shall have the right to be informed of the child's disposition by the youth court.

(12) A classification hearing officer of the State Department of Corrections, as provided in Section 47-5-103, shall have the right to inspect any youth court records, excluding abuse and neglect records, of any offender in the custody of the department who as a child or minor was a juvenile offender or was the subject of a youth court cause of action, and the State Parole Board, as

provided in Section 47-7-17, shall have the right to inspect such records when the offender becomes eligible for parole.

(13) The youth court shall notify the Department of Public Safety of the name, and any other identifying information such department may require, of any child who is adjudicated delinquent as a result of a violation of the Uniform Controlled Substances Law.

(14) The Administrative Office of Courts shall have the right to inspect any youth court records in order that the number of youthful offenders, abused, neglected, truant and dependent children, as well as children in need of special care and children in need of supervision, may be tracked with specificity through the youth court and adult justice system, and to utilize tracking forms for such purpose.

(15) Upon a request by a youth court, the Administrative Office of Courts shall disclose all information at its disposal concerning any previous youth court intakes alleging that a child was a delinquent child, child in need of supervision, child in need of special care, truant child, abused child or neglected child, as well as any previous youth court adjudications for the same and all dispositional information concerning a child who at the time of such request comes under the jurisdiction of the youth court making such request.

(16) The Administrative Office of Courts may, in its discretion, disclose to the Department of Public Safety any or all of the information involving children contained in the office's youth court data management system known as Mississippi Youth Court Information Delivery System or "MYCIDS."

(17) The youth courts of the state shall disclose to the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) any youth court records in order that the number of youthful offenders, abused, neglected, truant and dependent children, as well as children in need of special care and children in need of supervision, may be tracked with specificity through the youth court and adult justice system, and to utilize tracking forms for such purpose. The disclosure prescribed in this subsection shall not require a court order and shall be made in sortable, electronic format where possible. The PEER Committee may seek the assistance of the Administrative Office of Courts in seeking this information. The PEER Committee shall not disclose the identities of any youth who have been adjudicated in the youth courts of the state and shall only use the disclosed information for the purpose of monitoring the effectiveness and efficiency of programs established to assist adjudicated youth, and to ascertain the incidence of adjudicated youth who become adult offenders.

(18) In every case where an abuse or neglect allegation has been made, the confidentiality provisions of this section shall not apply to prohibit access to a child's records by any state regulatory agency, any state or local prosecutorial agency or law enforcement agency; however, no identifying information concerning the child in question may be released to the public by such agency except as otherwise provided herein.

(19) In every case of child abuse or neglect, if a child's physical condition is medically labeled as medically "serious" or "critical" or a child dies, the

confidentiality provisions of this section shall not apply. In such cases, the following information may be released by the Mississippi Department of Child Protection Services: the cause of the circumstances regarding the fatality or medically serious or critical physical condition; the age and gender of the child; information describing any previous reports of child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or medically serious or critical physical condition; the result of any such investigations; and the services provided by and actions of the state on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or medically serious or critical physical condition.

(20) Any member of a foster care review board designated by the Department of Child Protection Services shall have the right to inspect youth court records relating to the abuse, neglect or child in need of supervision cases assigned to such member for review.

(21) Information concerning an investigation into a report of child abuse or child neglect may be disclosed without further order of the youth court in any administrative or due process hearing held, pursuant to Section 43-21-257, by the Department of Child Protection Services for individuals whose names will be placed on the central registry as substantiated perpetrators.

(22) The Department of Child Protection Services may disclose records involving children to the following:

(a) A foster home, residential child-caring agency or child-placing agency to the extent necessary to provide such care and services to a child;

(b) An individual, agency or organization that provides services to a child or the child's family in furtherance of the child's permanency plan to the extent necessary in providing those services;

(c) Health and mental health care providers of a child to the extent necessary for the provider to properly treat and care for the child;

(d) An educational institution or educational services provider where the child is enrolled or where enrollment is anticipated to the extent necessary for the school to provide appropriate services to the child; and

(e) Any other state agency if the disclosure is necessary to the department in fulfilling its statutory responsibilities in protecting the best interests of the child.

**HISTORY: Laws, 1979, ch. 506, § 28; Laws, 1980, ch. 550, § 4; Laws, 1986, ch. 422, § 1; Laws, 1988, ch. 459; Laws, 1989, ch. 433, § 1; Laws, 1991, ch. 468 § 6; Laws, 1994, ch. 591, § 2; Laws, 1994, ch. 595, § 5; Laws, 1995, ch. 547, § 3; Laws, 1997, ch. 440, § 8; Laws, 1998, ch. 447, § 1; Laws, 1998, ch. 516, § 19; Laws, 2000, ch. 436, § 2; Laws, 2000, ch. 499, § 23; Laws, 2001, ch. 360, § 1; Laws, 2001, ch. 393, § 12; Laws, 2004, ch. 489, § 2; Laws, 2006, ch. 600, § 3; Laws, 2007, ch. 478, § 1; Laws, 2007, ch. 587, § 11; Laws, 2010, ch. 349, § 1; Laws, 2013, ch. 531, § 1; Laws, 2014, ch. 375, § 2; Laws, 2017, ch. 420, § 2, eff from and after July 1, 2017; Laws, 2019, ch. 464, § 2, eff from and after July 1, 2019; Laws, 2019, ch. 473, § 3, eff from and after July 1, 2019.**

**Joint Legislative Committee Note —** Section 2 of Chapter 464, Laws of 2019, effective July 1, 2019, (approved at 10:02 a.m. on April 16, 2019), amended this section.

Section 3 of Chapter 473, Laws of 2019, effective July 1, 2019 (approved at 10:20 a.m. on April 16, 2019), also amended this section. As set out above, this section reflects the language of Section 3 of Chapter 473, Laws of 2019, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective date and the approval date of the amendments are the same, the amendment with the latest approval time supersedes all other amendments to the same section approved on an earlier date and time.

**Amendment Notes —** The 2017 amendment inserted "or a Court-Appointed Special Advocate (CASA) volunteer that may be assigned in an abuse and neglect case" in the introductory paragraph of (1); and added the last two sentences of (3).

The first 2019 amendment (ch. 464) made the same changes as § 3, Chapter 473, Laws of 2019, and in (1), in the introductory paragraph, inserted "or officials," "a guardian ad litem appointed to a child by the court" and "or to identify a person who knowingly made a false allegation of child abuse or neglect," added "including the chancery court that ordered a forensic interview" in (c), deleted "To" at the beginning of (g) and made a related change, and added (h); in (3), substituted "relevant to a matter to be heard by a youth court" for "which is to be considered by the youth court at a hearing" in the first sentence and "that is to be considered by the youth court at a hearing" in the second sentence; substituted "Department of Child Protection Services" for "Department of Human Service" in (5)(b), (6), (20) and (21); inserted "or a" preceding "public" in (6); rewrote (19); and added (22).

The second 2019 amendment (ch. 473) made the same changes as § 2, Chapter 464, and in (1), in the introductory paragraph, inserted "or officials," "a guardian ad litem appointed to a child by the court" and "or to identify a person who knowingly made a false allegation of child abuse or neglect," added "including the chancery court that ordered a forensic interview" in (c), deleted "To" at the beginning of (g) and made a related change, and added (h); in (3), substituted "relevant to a matter to be heard by a youth court" for "which is to be considered by the youth court at a hearing" in the first sentence and "that is to be considered by the youth court at a hearing" in the second sentence; substituted "Department of Child Protection Services" for "Department of Human Service" in (5)(b), (6), (20) and (21); inserted "or a" preceding "public" in (6); rewrote (19); and added (22).

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Impeachment purposes.
3. Right to records.
4. Confidentiality requirement, no violation.

**1. In general.**

Circuit court properly dismissed defendant's petition for postconviction collateral relief because he failed to show that he was entitled to any relief where his petition—filed more than 13 years after the judgment of conviction was entered—was time barred, his sentence was consistent with the State's plea offer, defendant's guilty plea was knowingly, intelligently, and voluntarily made, his sentence was presumptively valid and not violative of a fundamental, constitutional right, and the inquiries into defendant's juvenile record were made in order to impeach his mother's credibility after defense counsel opened the door during direct examination. Harris v. State, — So. 3d —, 2020 Miss. App. LEXIS 4 (Miss. Ct. App. Jan. 7, 2020), cert. denied, — So. 3d —, 2020 Miss. LEXIS 350 (Miss. 2020).

**2. Impeachment purposes.**

Names and addresses of the witnesses who testified in the related youth-court proceedings had to be disclosed to a high school in parents' negligence action seeking damages associated with the alleged assault of their daughter because allowing disclosure of information deemed relevant to the school's defense through an in camera review balanced the parents' interest in the confidentiality of youth-court records and the school's interest in receiving a fair trial. Pass Christian Sch. Dist. v. Harrison Cty. Youth Court of Miss. (In re M.D.G.), 275 So. 3d 1096, 2019 Miss. LEXIS 262 (Miss. 2019).

**3. Right to records.**

Trial court did not err in denying defendant's motion to review records of relevant youth-court proceedings after finding that the records were cumulative to other discovery defendant received. Pustay v. State, 221 So. 3d 320, 2016 Miss. App. LEXIS 643 (Miss. Ct. App. 2016), cert. denied, 216 So. 3d 1150, 2017 Miss. LEXIS 232 (Miss. 2017).

**4. Confidentiality requirement, no violation.**

Juvenile's required registration as a sex offender, following his adjudication of delinquency for sexual battery, did not violate the Youth Court Law's confidentiality requirement. The names and addresses of juveniles adjudicated delinquent for sexual battery were exempted from the Youth Court Law's confidentiality requirement for the purposes of registration as a sex offender. L.B.C. v. Forrest Cty. Youth Court, — So. 3d —, 2017 Miss. LEXIS 443 (Miss. Nov. 30, 2017).

## § 43-21-265. Destruction of records.

### RESEARCH REFERENCES

**ALR.**

Judicial Expunction of Criminal Record of Convicted Adult Under Statute – General Principles, and Expunction of Criminal Records Under Statutes Providing for Such Relief Where Criminal Proceeding Is Terminated in Favor of Defendant, upon Completion of Probation, upon Suspended Sentence, and Where Expungement Relief Predicated upon Type, and Number, of Offenses. 69 A.L.R.6th 1.

## CUSTODY AND DETENTION

Sec.
43-21-301. Custody orders.
43-21-303. Taking into custody without a custody order.
43-21-309. Detention and shelter hearings.
43-21-321. Development of procedures and policies that comply with Juvenile Facilities Monitoring Unit regulations; provision of educational services to detained students.
43-21-323. Juvenile Detention Facilities Monitoring Unit established; duties and responsibilities; confidentiality of records of monitor and communications of reporter.

## § 43-21-301. Custody orders.

(1) No court other than the youth court shall issue an arrest warrant or custody order for a child in a matter in which the youth court has exclusive original jurisdiction but shall refer the matter to the youth court.

(2) Except as otherwise provided, no child in a matter in which the youth court has exclusive original jurisdiction shall be taken into custody by a law enforcement officer, the Department of Human Services, the Department of Child Protection Services, or any other person unless the judge or his designee has issued a custody order to take the child into custody.

(3) The judge or his designee may require a law enforcement officer, the Department of Human Services, the Department of Child Protection Services, or any suitable person to take a child into custody for a period not longer than forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays.

(a) Custody orders under this subsection may be issued if it appears that there is probable cause to believe that:

(i) The child is within the jurisdiction of the court;

(ii) Custody is necessary because of any of the following reasons: the child is in danger of a significant risk of harm, any person would be in danger of a significant risk of harm by the child, to ensure the child's attendance in court at such time as required, or a parent, guardian or custodian is not available to provide for the care and supervision of the child; and

(iii) There is no reasonable alternative to custody.

A finding of probable cause under this subsection (3)(a) shall not be based solely upon a positive drug test of a newborn or parent for marijuana; however, a finding of probable cause may be based upon an evidence-based finding of harm to the child or a parent's inability to provide for the care and supervision of the child due to the parent's use of marijuana. Probable cause for unlawful use of any controlled substance, except as otherwise provided in this subsection (3)(a) for marijuana, may be based: 1. upon a parent's positive drug test for unlawful use of a controlled substance only if the child is in danger of a significant risk of harm or the parent is unable to provide proper care or supervision of the child because of the unlawful use and there is no reasonable alternative to custody; and 2. upon a newborn's positive drug screen for a controlled substance that was used unlawfully only if the child is in danger of a significant risk of harm or the parent is unable to provide proper care or supervision of the child because of the unlawful use and there is no reasonable alternative to custody.

(b) Custody orders under this subsection shall be written. In emergency cases, a judge or his designee may issue an oral custody order, but the order shall be reduced to writing within forty-eight (48) hours of its issuance.

(c) Each youth court judge shall develop and make available to law enforcement a list of designees who are available after hours, on weekends and on holidays.

(4) The judge or his designee may order, orally or in writing, the immediate release of any child in the custody of any person or agency. Except as otherwise provided in subsection (3) of this section, custody orders as provided by this chapter and authorizations of temporary custody may be written or oral, but, if oral, reduced to writing within forty-eight (48) hours, excluding Saturdays, Sundays and statutory state holidays. The written order shall:

(a) Specify the name and address of the child, or, if unknown, designate him or her by any name or description by which he or she can be identified with reasonable certainty;

(b) Specify the age of the child, or, if unknown, that he or she is believed to be of an age subject to the jurisdiction of the youth court;

(c) Except in cases where the child is alleged to be a delinquent child or a child in need of supervision, state that the effect of the continuation of the child's residing within his or her own home would be contrary to the welfare of the child, that the placement of the child in foster care is in the best interests of the child, and unless the reasonable efforts requirement is bypassed under Section 43-21-603(7)(c), also state that (i) reasonable efforts have been made to maintain the child within his or her own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody; or (ii) the circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and that there is no reasonable alternative to custody. If the court makes a finding in accordance with (ii) of this paragraph, the court shall order that reasonable efforts be made toward the reunification of the child with his or her family;

(d) State that the child shall be brought immediately before the youth court or be taken to a place designated by the order to be held pending review of the order;

(e) State the date issued and the youth court by which the order is issued; and

(f) Be signed by the judge or his designee with the title of his office.

(5) The taking of a child into custody shall not be considered an arrest except for evidentiary purposes.

(6)(a) No child who has been accused or adjudicated of any offense that would not be a crime if committed by an adult shall be placed in an adult jail or lockup. An accused status offender shall not be held in secure detention longer than twenty-four (24) hours prior to and twenty-four (24) hours after an initial court appearance, excluding Saturdays, Sundays and statutory state holidays, except under the following circumstances: a status offender may be held in secure detention for violating a valid court order pursuant to the criteria as established by the federal Juvenile Justice and Delinquency Prevention Act of 2002, and any subsequent amendments thereto, and out-of-state runaways may be detained pending return to their home state.

(b) No accused or adjudicated juvenile offender, except for an accused or adjudicated juvenile offender in cases where jurisdiction is waived to the adult criminal court, shall be detained or placed into custody of any adult jail or lockup for a period in excess of six (6) hours.

(c) If any county violates the provisions of paragraph (a) or (b) of this subsection, the state agency authorized to allocate federal funds received pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974, 88 Stat. 2750 (codified in scattered Sections of 5, 18, 42 USCS), shall withhold the county's share of such funds.

(d) Any county that does not have a facility in which to detain its juvenile offenders in compliance with the provisions of paragraphs (a) and (b) of this subsection may enter into a contractual agreement to detain or place into custody the juvenile offenders of that county with any county or municipality that does have such a facility, or with the State of Mississippi, or with any private entity that maintains a juvenile correctional facility.

(e) Notwithstanding the provisions of paragraphs (a), (b), (c) and (d) of this subsection, all counties shall be allowed a one-year grace period from March 27, 1993, to comply with the provisions of this subsection.

**HISTORY: Laws, 1979, ch. 506, § 32; Laws, 1985, ch. 486, § 4; Laws, 1993, ch. 439, § 1; Laws, 2004, ch. 417, § 1; Laws, 2006, ch. 539, § 2; Laws, 2012, ch. 564, § 2; Laws, 2017, ch. 395, § 1, eff from and after July 1, 2017; Laws, 2019, ch. 464, § 5, eff from and after July 1, 2019; Laws, 2020, ch. 329, § 1, eff from and after July 1, 2020.**

**Amendment Notes —** The 2017 amendment inserted "the Department of Child Protection Services" in (2) and (3); and added the last paragraph of (3)(a).

The 2019 amendment, in (3)(a), in the last paragraph, substituted "probable cause under this subsection (3)(a)" for "probable cause as presecribed under this paragraph" and "newborn or parent" for "child's parent," and added the last sentence; and substituted "reduced to writing within forty-eight (48) hours, excluding Saturdays, Sundays and statutory state holidays" in (4).

The 2020 amendment, in (3)(a), in (ii), substituted "the child is in danger of a significant risk of harm, any person would be in danger of a significant risk of harm by the child" for "the child is endangered, any person would be endangered by the child," and in the last paragraph, substituted "child is in danger of a significant risk of harm" for "child is endangered" twice; and made a minor stylistic change.

### JUDICIAL DECISIONS

**1. In general.**

Evidence failed to demonstrate that a child was neglected because no evidence was offered to show that the mother's fear of the father led to the child being neglected, and evidence of the mother's positive test for marijuana usage was not shown to have affected the child; the mother's marijuana usage did not negate the requirement of a causal connection between the drug usage and the neglect. E.K. v. Miss. Dep't of Child Prot. Servs., 249 So. 3d 377, 2018 Miss. LEXIS 323 (Miss. 2018).

## § 43-21-303. Taking into custody without a custody order.

(1) No child in a matter in which the youth court has original exclusive jurisdiction shall be taken into custody by any person without a custody order except that:

(a) A law enforcement officer may take a child in custody if:

(i) Grounds exist for the arrest of an adult in identical circumstances; and

(ii) Such law enforcement officer has probable cause to believe that custody is necessary as defined in Section 43-21-301; and

(iii) Such law enforcement officer can find no reasonable alternative to custody; or

(b) A law enforcement officer or an agent of the Department of Child Protection Services or the Department of Human Services may take a child into immediate custody if:

(i) There is probable cause to believe that the child is in immediate danger of personal harm; however, probable cause shall not be based solely upon a positive drug test of a newborn or parent for marijuana, but a finding of probable cause may be based upon an evidence-based finding of harm to the child or a parent's inability to provide for the care and supervision of the child due to the parent's use of marijuana. Probable cause for unlawful use of any controlled substance, except as otherwise provided in this subparagraph (i) for marijuana, may be based: 1. upon a parent's positive drug test for unlawful use of a controlled substance only if the child is in danger of a significant risk of harm or the parent is unable to provide proper care or supervision of the child because of the unlawful use and there is no reasonable alternative to custody; and 2. upon a newborn's positive drug screen for a controlled substance that was used unlawfully only if the child is in danger of a significant risk of harm or the parent is unable to provide proper care or supervision of the child because of the unlawful use and there is no reasonable alternative to custody; and

(ii) There is probable cause to believe that immediate custody is necessary as set forth in Section 43-21-301(3); and

(iii) There is no reasonable alternative to custody; and

(c) Any other person may take a child into custody if grounds exist for the arrest of an adult in identical circumstances. Such other person shall immediately surrender custody of the child to the proper law enforcement officer who shall thereupon continue custody only as provided in subsection (1)(a) of this section.

(2) When it is necessary to take a child into custody, the least restrictive custody should be selected.

(3) Unless the child is immediately released, the person taking the child into custody shall immediately notify the judge or his designee. A person taking a child into custody shall also make continuing reasonable efforts to notify the child's parent, guardian or custodian and invite the parent, guardian or custodian to be present during any questioning.

(4) A child taken into custody shall not be held in custody for a period longer than reasonably necessary, but not to exceed twenty-four (24) hours, and shall be released to his parent, guardian or custodian unless the judge or his designee authorizes temporary custody.

**HISTORY: Laws, 1979, ch. 506, § 33; Laws, 1980, ch. 550, § 14; Laws, 2017, ch. 395, § 2, eff from and after July 1, 2017; Laws, 2019, ch. 464, § 9, eff from and after July 1, 2019; Laws, 2020, ch. 329, § 2, eff from and after July 1, 2020.**

**Amendment Notes** — The 2017 amendment inserted "however, probable cause shall not…the parent's use of marijuana" in (1)(b)(i); and made a minor stylistic change.

The 2019 amendment, in (1)(b), substituted "Department of Child Protection Services or the Department of Human Services" for "department of public welfare" and inserted "immediate" in the introductory paragraph, in (i), substituted "newborn or parent" for "child's parent" and added the last sentence, substituted "There is" for "Such law enforcement officer or agent has" at the beginning of (ii) and "Such law enforcement officer or agent can find" in (iii), and substituted "as set forth in Section 43-21-301(3)" for "as defined in Section 43-21-301(3)(b)" in (ii).

The 2020 amendment, in (1)(a)(ii), deleted "(3)(b)" following "Section 43-1-301"; in (1)(b)(i), substituted "child is in danger of a significant risk of harm" for "child is endangered" twice; and in (1)(c), substituted "child into custody" for "child in custody."

## § 43-21-309. Detention and shelter hearings.

(1) A child who has been ordered or taken into custody may be held in custody for longer than temporary custody if:

(a) A written complaint or petition has been filed; and

(b) A court order has been entered for continued custody following a review of that custody at a detention hearing in delinquency and child in need of supervision cases and at a shelter hearing in abuse and neglect cases.

(2) Reasonable oral or written notice of the time, place and purpose of the hearing shall be given to the child; to his or her parent, guardian or custodian; to his or her guardian ad litem, if any; to his or her Court-Appointed Special Advocate (CASA) volunteer, if any; and to his or her counsel. If the parent, guardian or custodian cannot be found, the youth court may hold the hearing in the absence of the child's parent, guardian or custodian.

(3) At the detention or shelter hearing, all parties present shall have the right to present evidence and cross-examine witnesses produced by others. The youth court may, in its discretion, limit the extent but not the right or presentation of evidence and cross-examination of witnesses. The youth court may receive any testimony and other evidence relevant to the necessity for the continued custody of the child without regard to the formal rules of evidence, including hearsay and opinion evidence. All testimony shall be made under oath and may be in narrative form.

(4)(a) At the conclusion of the detention or shelter hearing, the youth court shall order that the child be released to the custody of the child's parent, guardian or custodian unless the youth court finds and the detention or shelter hearing order recites that:

(i) There is probable cause that the youth court has jurisdiction; and

(ii) Custody is necessary as defined in Section 43-21-301(3)(b).

(b) In the case of a shelter hearing, the shelter hearing order shall further recite that the effect of the continuation of the child's residing within his or her own home would be contrary to the welfare of the child, that the placement of the child in foster care is in the best interest of the child, and, unless the reasonable efforts requirement is bypassed under Section 43-21-603(7)(c), the order also must state:

(i) Reasonable efforts have been made to maintain the child within his own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody; or

(ii) The circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and there is no reasonable alternative to custody.

(c) In the event that the court makes a finding in accordance with paragraph (b)(ii) of this subsection, the court shall order that reasonable efforts be made towards the reunification of the child with his or her family.

(5) The child with advice of counsel may waive in writing the time of the detention hearing or the detention hearing itself. The child's guardian ad litem, and parent, guardian or custodian, and child may waive in writing the time of the shelter hearing or the shelter hearing itself. If the child has not reached his tenth birthday, the child's consent shall not be required.

(6) Any order placing a child into custody shall comply with the requirements provided in Section 43-21-301.

**HISTORY: Laws, 1979, ch. 506, § 36; Laws, 1980, ch. 550, § 15; Laws, 1985, ch. 486, § 5; Laws, 1993, ch. 439, § 3; Laws, 1997, ch. 440, § 9; Laws, 1998, ch. 516, § 20; Laws, 2004, ch. 417, § 2; Laws, 2017, ch. 420, § 4, eff from and after July 1, 2017.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in (4)(c) by substituting "paragraph (b)(ii) of this subsection" for "subparagraph (ii)." The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

**Amendment Notes —** The 2017 amendment inserted "to his or her Court-Appointed Special Advocate (CASA) volunteer, if any" in (2).

## § 43-21-321. Development of procedures and policies that comply with Juvenile Facilities Monitoring Unit regulations; provision of educational services to detained students.

(1) All juvenile detention centers shall develop and implement policies and procedures that comply with the regulations promulgated by the Juvenile Facilities Monitoring Unit.

(2) If a student's detention will cause the student to miss one or more days of school during the academic school year or special education services when required by state and federal law or when designated on a student's Individualized Education Program (IEP), the detention center staff shall notify school district officials where the detainee last attended school by the first school day following the student's placement in the facility. Detention center staff shall not disclose youth court records to the school district, except as provided by Section 43-21-261.

(3) All juvenile detention centers shall adhere to the following minimum standards:

(a) Each center shall have a manual that states the policies and procedures for operating and maintaining the facility, and the manual shall be reviewed annually and revised as needed;

(b) Each center shall have a policy that specifies support for a drug-free workplace for all employees, and the policy shall, at a minimum, include the following:

(i) The prohibition of the use of illegal drugs;

(ii) The prohibition of the possession of any illegal drugs except in the performance of official duties;

(iii) The procedure used to ensure compliance with a drug-free workplace policy;

(iv) The opportunities available for the treatment and counseling for drug abuse; and

(v) The penalties for violation of the drug-free workplace policy; and

(c) Each center shall have a policy, procedure and practice that ensures that personnel files and records are current, accurate and confidential.

(4) Local school districts shall work collaboratively with juvenile detention center staff to provide special education services as required by state and federal law. Upon the written request of the youth court judge for the county in which the detention center is located, a local school district in the county in which the detention center is located, or a private provider agreed upon by the youth court judge and sponsoring school district, shall provide a certified teacher to provide educational services to detainees. The youth court judge shall designate the school district which shall be defined as the sponsoring school district. The local home school district shall be defined as the school district where the detainee was last enrolled. Detainees who have received a High School Equivalency diploma shall be provided remedial instruction in math and language arts, or other areas as determined by the sponsoring school district, which may be computer-based instruction, as well as career counseling opportunities. Teacher selection shall be in consultation with the youth court judge. The Legislature shall annually appropriate sufficient funds for the provision of educational services, as provided under this section, to detainees in detention centers.

(5) To ensure students in youth detention facilities continue to receive appropriate educational services, local education agencies (LEAs) must have policies and procedures to ensure the relevant records of students who move to, and from, youth detention facilities are sent to and received from the sponsoring school district as soon as practicable to enable the effective delivery of educational services.

(6) The sponsoring school district, or a private provider agreed upon by the youth court judge and sponsoring school district, shall be responsible for providing the instructional program and, when required by state and federal law, special education services, for the detainee while in detention during the sponsoring school district's academic calendar and a six-week summer enrichment program, the dates which are determined by the sponsoring school district. The enrichment program shall be facilitated by certified or classified district staff and shall be focused academically on mathematics and English language arts instruction, and may include other primary core subject areas, including character education. The six-week enrichment program shall not set aside any guidelines set forth by the Individuals with Disabilities Education Act. The summer enrichment program may be computer-based and have an abbreviated school day that shall not be less than four (4) hours per day. After forty-eight (48) hours of detention during the sponsoring school district's

academic calendar and six-week enrichment program, the detainee shall receive the following services which may be computer-based:

(a) Diagnostic assessment of grade-level mastery of reading and math skills;

(b) Individualized instruction and practice to address any weaknesses identified in the assessment conducted under paragraph (a) of this subsection if the detainee is in the center for more than forty-eight (48) hours during the sponsoring school district's academic calendar and six-week enrichment program; and

(c) Character education to improve behavior.

(7) No later than the tenth day of detention during the sponsoring school district's academic calendar and six-week enrichment program, the detainee shall begin an extended detention education program. A team consisting of a certified teacher provided by the local sponsoring school district or a private provider agreed upon by the youth court judge and sponsoring school district, the appropriate official from the local home school district, and the youth court counselor or representative will develop an individualized academic program (IAP) for the detainee, where appropriate as determined by the teacher of the sponsoring school district, or a private provider agreed upon by the youth court judge and sponsoring school district. The detainee's parent or guardian shall participate on the team unless excused by the youth court judge. Failure of any party to participate shall not delay implementation of this education program. Any student identified under IDEA will utilize the student's current IEP in lieu of the IAP.

(8) It shall be the responsibility of the student's local home school district school to ensure that all related services identified on a student's IEP are provided in accordance with the student's IEP.

(9) It shall be the responsibility of the student's local home school district to collaborate with the sponsoring school district to ensure that all students, including students with disabilities, are appropriately included in general state and district-wide assessments, including assessments required by the Elementary and Secondary Education Act of 1965 (ESEA), as amended, and state law.

(10) Teachers in youth detention facilities serving IDEA-eligible students must be licensed with endorsements required by state and federal law, and related services personnel and paraprofessionals must meet state and federal qualifications for those personnel.

(11) The sponsoring school district, or a private provider agreed upon by the youth court judge and sponsoring school district, shall provide the detention center with an appropriate and adequate computer lab to serve detainees. The Legislature shall annually appropriate sufficient funds to equip and maintain the computer labs. The computer lab shall become the property of the detention centers and the sponsoring school districts shall maintain and update the labs.

(12) The Mississippi Department of Education will collaborate with the appropriate state and local agencies, juvenile detention centers and local

school districts to ensure the provision of educational services to every student placed in a juvenile detention center. The Mississippi Department of Education has the authority to develop and promulgate policies and procedures regarding financial reimbursements to the sponsoring school district from school districts that have students of record or compulsory-school-age residing in said districts placed in a youth detention center. Such services may include, but not be limited to: assessment and math and reading instruction, character education and behavioral counseling. The Mississippi Department of Education shall work with the appropriate state and local agencies, juvenile detention centers and local school districts to annually determine the proposed costs for educational services to youth placed in juvenile detention centers and annually request sufficient funding for such services as necessary.

(13) Juvenile detention centers shall ensure that staffs create transition planning for youth leaving the facilities. This process shall be led by the student's youth court counselor, and shall include staff from the educational center. Plans shall include providing the youth and his or her parents or guardian with copies of the youth's detention center education and health records, information regarding the youth's home community, referrals to mental and counseling services when appropriate, and providing assistance in making initial appointments with community service providers; the transition team will work together to help the detainee successfully transition back into the home school district once released from detention. The transition team will consist of a certified teacher provided by the local sponsoring school district, or a private provider agreed upon by the youth court judge and sponsoring school district, the appropriate official from the local home school district, the school attendance officer assigned to the local home school district, and the youth court counselor or representative. The detainee's parent or guardian shall participate on the team unless excused by the youth court judge. Failure of any party to participate shall not delay implementation of this education program.

(14) Student's records, including grades and attendance, shall be part of the student's transition and submitted to the receiving school district for review. Grades received from the Juvenile Detention Center (JDC) education program shall be incorporated into each student's academic performance grade.

(15) The Mississippi Department of Public Safety Juvenile Detention Facilities Monitoring Unit shall monitor the detention facilities for compliance with these minimum standards, and no child shall be housed in a detention facility the monitoring unit determines is substantially out of compliance with the standards prescribed in this section. In accordance with Section 43-21-907(5), Mississippi Code of 1972, the Mississippi Department of Education has the authority to promulgate rules and regulations related to the education of all children housed in a juvenile detention facility, to conduct inspections of the facility's educational services at least annually or more often as deemed necessary and shall provide the licensing agency with its determination of the facility's compliance with the education provisions. The licensing agency shall use the information in its determination of the facility's eligibility for licensure.

It is the intention of the Legislature that the implementation of the provisions of Section 43-21-321 shall not create accountability or accreditation requirements or standards upon the sponsoring school district or the home district that are greater, more restrictive or more demanding than those requirements imposed upon local school districts in the provision of educational services to the general population of students.

**HISTORY: Laws, 2002, ch. 602, § 1; Laws, 2005, ch. 471, § 5; Laws, 2006, ch. 539, § 4; Laws, 2007, ch. 568, § 1; Laws, 2008, ch. 481, § 1; Laws, 2011, ch. 510, § 1; Laws, 2012, ch. 564, § 3; Laws, 2016, ch. 438, § 9, eff from and after July 1, 2016; Laws, 2019, ch. 429, § 1, eff from and after July 1, 2019.**

**Joint Legislative Committee Note —** Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference at the end of (10) by substituting "this section" for "this subsection." The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

**Editor's Notes —** This section is set out above to correct errors in subsections (6) and (12) as they appeared in the 2019 Volume 11A Cumulative Supplement. In subsection (6), "the school board of" was deleted following "the dates which are determined by" in the first sentence. And in subsection (12), "from school districts that have students of record or compulsory-school-age residing in said districts placed in a youth detention center" was added at the end of the second sentence.

**Amendment Notes —** The 2016 amendment rewrote the section to remove certain minimum standards for the juvenile detention center, including a requirement that, at admission, juveniles undergo a health screening, be referred to the proper health care facility, if warranted, and receive an orientation about the facility's rules, procedures, programs, etc., to remove specific content of written procedures for admission of juveniles, and to delete minimum requirements regarding mail and telephone rights, preparation and storage of food, availability of special diet food plans, access to medical care and treatment, counseling, recreational, and religious services.

The 2019 amendment inserted "or special education services…Individualized Education Program (IEP)" in (2); in (4), substituted "was last enrolled" for "last attended prior to detention" at the end of the fourth sentence, and added the fifth sentence; added (5); redesignated former (5) and (6) as (6) and (7); in (6), in the introductory paragraph, rewrote the first sentence, which read: "The sponsoring school district, or a private provider agreed upon by the youth court judge and sponsoring school district, shall be responsible for providing the instructional program for the detainee while in detention," added the second through fourth sentences, and substituted "during the sponsoring school district's academic calendar and six-week enrichment program" for "excluding legal holidays and weekends," and in (b), inserted "during the sponsoring school district's…enrichment program"; in (7), inserted "during the sponsoring school district's…enrichment program" in the first sentence, substituted "academic program (IAP)" for "education program" in the second sentence, and added the last sentence; added (8) through (10); redesignated former (7) through (9) as (11) through (13); added the second sentence of (13); added (14); and redesignated former (10) as (15), and therein added the last four sentences.

## § 43-21-323. Juvenile Detention Facilities Monitoring Unit established; duties and responsibilities; confidentiality of records of monitor and communications of reporter.

(1) There is established the Juvenile Detention Facilities Monitoring Unit

within the Department of Public Safety to work in cooperation with the Council of Youth Court Judges and Referees and the Juvenile Justice Advisory Committee described in Sections 45-1-33 and 43-21-125; the Juvenile Detention Facilities Monitoring Unit is the licensing agency for juvenile detention facilities, as defined in Section 43-21-905. The unit shall be responsible for investigating, evaluating and securing the rights of children held in juvenile justice facilities, including detention centers, training schools and group homes throughout the state to ensure that the facilities operate in compliance with national best practices and state and federal law. The monitoring unit shall only monitor group homes that serve as a dispositional placement for delinquent youth pursuant to Section 43-21-605. Nothing in this section shall be construed as giving the monitoring unit authority to monitor foster care or shelter care placements. All monitors shall be employees of the Department of Public Safety. The inspections by the unit shall encompass the following:

(a) To review and evaluate (i) all procedures set by detention centers, training schools and group homes and (ii) all records containing information related to the operations of the detention centers, training schools and group homes;

(b) To review and investigate all complaints filed with the monitoring unit concerning children's treatment in detention centers, training schools and group homes;

(c) To conduct quarterly monitoring visits of all detention centers, training schools and group homes. The monitor shall have access to an entire facility and shall conduct confidential interviews with youth and facility staff;

(d) To advise a facility on how to meet the needs of children who require immediate attention;

(e) To provide technical assistance and advice to juvenile detention facilities, which will assist the facilities in complying with state and federal law.

To carry out the duties in this subsection (1) a monitor may consult with an administrator, employee, child, parent, expert or other individual in the course of monitoring or investigating. In addition, the monitor may review court documents and other confidential records as necessary to fulfill these duties.

(2) Additional duties of the monitoring unit are as follows:

(a) To make available on a quarterly basis to the Governor, Lieutenant Governor and each member of the Legislature and each member of a county board of supervisors, a report that describes:

(i) The work of the monitoring unit;

(ii) The results of any review or investigation undertaken by the monitoring unit;

(iii) Any allegations of abuse or injury of a child; and

(iv) Any problems concerning the administration of a detention center.

The reports described in this subsection shall keep the names of all children, parents and employees confidential.

(b) To promote awareness among the public and the children held in detention by providing the following:

(i) How the monitoring unit may be contacted;

(ii) The purpose of the monitoring unit; and

(iii) The services that the monitoring unit provides.

(3) The records of a monitor shall be confidential. Any child, staff member, parent or other interested individual may communicate to a monitor in person, by mail, by phone, or any other means. All communications shall be kept confidential and privileged, except that the youth court and the facility shall have access to such records, but the identity of reporters shall remain confidential.

**HISTORY: Laws, 2005, ch. 471, § 1; Laws, 2009, ch. 398, § 2; Laws, 2010, ch. 543, § 1; Laws, 2016, ch. 438, § 10, eff from and after July 1, 2016.**

**Amendment Notes** — The 2016 amendment, in the first sentence of (1), inserted "the Council of Youth Court Judges and Referees and," and added "and 43-21-125; the Juvenile Detention Monitoring Unit...Section 43-21-905" at the end, and made a related change.

## INTAKE

Sec.
43-21-353. Duty to inform state agencies and officials; duty to inform individual about whom report has been made of specific allegations.
43-21-357. Intake procedure.

### § 43-21-353. Duty to inform state agencies and officials; duty to inform individual about whom report has been made of specific allegations.

(1) Any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer, public or private school employee or any other person having reasonable cause to suspect that a child is a neglected child, an abused child, or a victim of commercial sexual exploitation or human trafficking shall cause an oral report to be made immediately by telephone or otherwise and followed as soon thereafter as possible by a report in writing to the Department of Child Protection Services, and immediately a referral shall be made by the Department of Child Protection Services to the youth court intake unit, which unit shall promptly comply with Section 43-21-357. In the course of an investigation, at the initial time of contact with the individual(s) about whom a report has been made under this Youth Court Act or with the individual(s) responsible for the health or welfare of a child about whom a report has been made under this chapter, the Department of Child Protection Services shall inform the individual of the specific complaints or allegations made against the individual. Consistent with subsection (4), the identity of the person who reported his or her suspicion shall not be disclosed

at that point. Where appropriate, the Department of Child Protection Services shall additionally make a referral to the youth court prosecutor.

Upon receiving a report that a child has been sexually abused, is a victim of commercial sexual exploitation or human trafficking or has been burned, tortured, mutilated or otherwise physically abused in such a manner as to cause serious bodily harm, or upon receiving any report of abuse that would be a felony under state or federal law, the Department of Child Protection Services shall immediately notify the law enforcement agency in whose jurisdiction the abuse occurred. Within forty-eight (48) hours, the department must notify the appropriate prosecutor and the Statewide Human Trafficking Coordinator. The department shall have the duty to provide the law enforcement agency all the names and facts known at the time of the report; this duty shall be of a continuing nature. The law enforcement agency and the department shall investigate the reported abuse immediately and shall file a preliminary report with the appropriate prosecutor's office within twenty-four (24) hours and shall make additional reports as new or additional information or evidence becomes available. The department shall advise the clerk of the youth court and the youth court prosecutor of all cases of abuse reported to the department within seventy-two (72) hours and shall update such report as information becomes available. In addition, if the Department of Child Protection Services determines that a parent or other person responsible for the care or welfare of an abused or neglected child maintains active duty status within the military, the department shall notify the applicable military installation family advocacy program that there is an allegation of abuse or neglect that relates to that child.

(2) Any report shall contain the names and addresses of the child and his parents or other persons responsible for his care, if known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, any other information that might be helpful in establishing the cause of the injury, and the identity of the perpetrator.

(3) The Department of Child Protection Services shall maintain a statewide incoming wide-area telephone service or similar service for the purpose of receiving reports of suspected cases of child abuse, commercial sexual exploitation or human trafficking; provided that any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer or public or private school employee who is required to report under subsection (1) of this section shall report in the manner required in subsection (1).

(4) Reports of abuse, neglect and commercial sexual exploitation or human trafficking made under this chapter and the identity of the reporter are confidential except when the court in which the investigation report is filed, in its discretion, determines the testimony of the person reporting to be material to a judicial proceeding or when the identity of the reporter is released to law enforcement agencies and the appropriate prosecutor pursuant to subsection (1). Reports made under this section to any law enforcement agency or prosecutorial officer are for the purpose of criminal investigation and prosecu-

tion only and no information from these reports may be released to the public except as provided by Section 43-21-261. Disclosure of any information by the prosecutor shall be according to the Mississippi Uniform Rules of Circuit and County Court Procedure. The identity of the reporting party shall not be disclosed to anyone other than law enforcement officers or prosecutors without an order from the appropriate youth court. Any person disclosing any reports made under this section in a manner not expressly provided for in this section or Section 43-21-261 shall be guilty of a misdemeanor and subject to the penalties prescribed by Section 43-21-267. Notwithstanding the confidentiality of the reporter's identity under this section, the Department of Child Protection Services may disclose a reporter's identity to the appropriate law enforcement agency or prosecutor if the department has reason to suspect the reporter has made a fraudulent report, and the Department of Child Protection Services must provide to the subject of the alleged fraudulent report written notification of the disclosure.

(5) All final dispositions of law enforcement investigations described in subsection (1) of this section shall be determined only by the appropriate prosecutor or court. All final dispositions of investigations by the Department of Child Protection Services as described in subsection (1) of this section shall be determined only by the youth court. Reports made under subsection (1) of this section by the Department of Child Protection Services to the law enforcement agency and to the district attorney's office shall include the following, if known to the department:

(a) The name and address of the child;

(b) The names and addresses of the parents;

(c) The name and address of the suspected perpetrator;

(d) The names and addresses of all witnesses, including the reporting party if a material witness to the abuse;

(e) A brief statement of the facts indicating that the child has been abused, including whether the child experienced commercial sexual exploitation or human trafficking, and any other information from the agency files or known to the family protection worker or family protection specialist making the investigation, including medical records or other records, which may assist law enforcement or the district attorney in investigating and/or prosecuting the case; and

(f) What, if any, action is being taken by the Department of Child Protection Services.

(6) In any investigation of a report made under this chapter of the abuse or neglect of a child as defined in Section 43-21-105(*l*) or (m), the Department of Child Protection Services may request the appropriate law enforcement officer with jurisdiction to accompany the department in its investigation, and in such cases the law enforcement officer shall comply with such request.

(7) Anyone who willfully violates any provision of this section shall be, upon being found guilty, punished by a fine not to exceed Five Thousand Dollars ($5,000.00), or by imprisonment in jail not to exceed one (1) year, or both.

(8) If a report is made directly to the Department of Child Protection Services that a child has been abused or neglected or experienced commercial sexual exploitation or human trafficking in an out-of-home setting, a referral shall be made immediately to the law enforcement agency in whose jurisdiction the abuse occurred and the department shall notify the district attorney's office and the Statewide Human Trafficking Coordinator within forty-eight (48) hours of such report. The Department of Child Protection Services shall investigate the out-of-home setting report of abuse or neglect to determine whether the child who is the subject of the report, or other children in the same environment, comes within the jurisdiction of the youth court and shall report to the youth court the department's findings and recommendation as to whether the child who is the subject of the report or other children in the same environment require the protection of the youth court. The law enforcement agency shall investigate the reported abuse immediately and shall file a preliminary report with the district attorney's office within forty-eight (48) hours and shall make additional reports as new information or evidence becomes available. If the out-of-home setting is a licensed facility, an additional referral shall be made by the Department of Child Protection Services to the licensing agency. The licensing agency shall investigate the report and shall provide the Department of Child Protection Services, the law enforcement agency and the district attorney's office with their written findings from such investigation as well as that licensing agency's recommendations and actions taken.

(9) If a child protective investigation does not result in an out-of-home placement, a child protective investigator must provide information to the parent or guardians about community service programs that provide respite care, counseling and support for children who have experienced commercial sexual exploitation or human trafficking, voluntary guardianship or other support services for families in crisis.

**HISTORY: Laws, 1979, ch. 506, § 41; Laws, 1980, ch. 550, § 17; Laws, 1984, ch. 342; Laws, 1985, ch. 360; Laws, 1993, ch. 522, § 1; Laws, 1994, ch. 387, § 1; Laws, 1994, ch. 591, § 3; Laws, 1995, ch. 335, § 1; Laws, 1996, ch. 323, § 2; Laws, 1997, ch. 440, § 10; Laws, 1998, ch. 340, § 1; Laws, 1998, ch. 557, § 1; Laws, 2004, ch. 489, § 3; Laws, 2006, ch. 600, § 4; Laws, 2007, ch. 337, § 3; Laws, 2016, ch. 501, § 7, eff from and after July 1, 2016; Laws, 2019, ch. 350, § 1, eff from and after July 1, 2019; Laws, 2019, ch. 420, § 5, eff from and after July 1, 2019; Laws, 2019, ch. 464, § 3, eff from and after July 1, 2019; Laws, 2019, ch. 473, § 4, eff from and after July 1, 2019.**

**Joint Legislative Committee Note —** Section 1 of Chapter 350, Laws of 2019, effective July 1, 2019 (approved March 21, 2019), Section 5 of Chapter 420, Laws of 2019, effective July 1, 2019 (approved March 28, 2019), Section 3 of Chapter 464, Laws of 2019, effective July 1, 2019 (approved 10:02 a.m., April 16, 2019), and Section 4 of Chapter 473, Laws of 2019, effective July 1, 2019 (approved 10:20 a.m., April 16, 2019) amended this section. As set out above, this section reflects the language of Section 4 of Chapter 473, Laws of 2019, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date, or if the effective dates are the same, the amendment with the latest approval date, or if the effective date and the approval date of the amendments are the same, the amendment with the latest approval time supersedes all other amendments to the same section approved on an earlier date and time.Editor's Notes. — This section is set out above to correct an error in subsection (2) as it appears in the 2019 Volume 11A Cumulative Supplement.

**Amendment Notes —** The 2016 amendment added (9); and made a minor stylistic change near the end of (4).

The first 2019 amendment (ch. 350), added the last sentence of the last paragraph of (1); and substituted "Department of Child Protection Services" for "Department of Human Services" throughout.

The second 2019 amendment (ch. 420) substituted "Department of Child Protection Services" for "Department of Human Services" throughout the section; in (1), in the first paragraph, inserted "a victim of commercial sexual exploitation or human trafficking" and made a related change, in the second paragraph, divided the former first sentence into the present first and second sentences by substituting "the abuse occurred. Within forty-eight (48) hours, the department shall notify" for "the abuse occurred and shall notify," in the first sentence, inserted "or a victim of commercial sexual exploitation or human trafficking," in the second sentence, deleted "within forty-eight (48) hours following "the appropriate prosecutor" and added "the Statewide Human Trafficking coordinator" at the end, and deleted "of Human Services" following "department" in the third, fourth and fifth sentences; in (2), deleted "to the Department of Human Services" following "Any report" and made a minor stylistic change; inserted "commercial sexual exploitation or human trafficking" in (3); inserted "commercial sexual exploitation or human trafficking" in the first sentence of (4); inserted "including whether the child experienced commercial sexual exploitation or human trafficking" in (5)(e); substituted "Section 43-21-105(l) or (m)" for "Section 43-21-105(m)" in (6); in (8), inserted "or experienced commercial sexual exploitation or human trafficking" and "and Statewide Human Trafficking Coordinator" in the first sentence, and deleted "of Human Services" following "department" in the last sentence; and inserted "counseling and support…exploitation or human trafficking in (9).

The third amendment (ch. 464) made the same changes as § 4, Chapter 473 and substituted "Department of Child Protection Services" for "Department of Human Services" throughout; in (1), in the first paragraph, inserted "or a victim of commercial sexual exploitation or human trafficking" in the first sentence, and "at that point" in the third sentence, and in the second paragraph, divided the former first sentence into the present first three sentences, and in the first sentence, inserted "is a victim of commercial sexual exploitation or human trafficking" and "has been" and deleted "and shall notify the appropriate prosecutor" at the end, in the second sentence, inserted "the department must notify the appropriate prosecutor" and substituted "Statewide Human Trafficking Coordinator" for "Department of Human Services" at the end, and in the third sentence, added "The department" at the beginning, deleted "of Human Services" in the fifth sentence, and added the last sentence; inserted "commercial sexual exploitation or human trafficking"; in (4), inserted "and commercial sexual exploitation or human trafficking" and made a related change in the first sentence, and added the last sentence; inserted "including whether the child experienced commercial sexual exploitation or human trafficking" in (5)(e); in (8), in the first sentence, inserted "or experience commercial sexual exploitation or human trafficking" and "and the Statewide Human Trafficking Coordinator," and deleted "of Human Services" following "the department" in the last sentence; and inserted "counseling and support for children who have experienced commercial sexual exploitation or human trafficking" in (9).

The fourth 2019 amendment (ch. 473) made the same changes as § 3, Chapter 464 and substituted "Department of Child Protection Services" for "Department of Human Services" throughout; in (1), in the first paragraph, inserted "or a victim of commercial sexual exploitation or human trafficking" in the first sentence, and "at that point" in the third sentence, and in the second paragraph, divided the former first sentence into the present first three sentences, and in the first sentence, inserted "is a victim of commercial sexual exploitation or human trafficking" and "has been" and deleted "and shall notify the appropriate prosecutor" at the end, in the second sentence, inserted "the department must notify the appropriate prosecutor" and substituted "Statewide Human Trafficking Coordinator" for "Department of Human Services" at the end, and in the third sentence, added "The department" at the beginning, deleted "of Human Services" in the fifth sentence, and added the last sentence; inserted "commercial sexual exploitation or human trafficking"; in (4), inserted "and commercial sexual exploitation or human trafficking" and made a related change in the first sentence, and added the last sentence; inserted "including whether the child experienced commercial sexual exploitation or human trafficking" in (5)(e); in (8), in the first sentence, inserted "or experience commercial sexual exploitation or human trafficking" and "and the Statewide Human Trafficking Coordinator," and deleted "of Human Services" following "the department" in the last sentence; and inserted "counseling and support for children who have experienced commercial sexual exploitation or human trafficking" in (9).

## § 43-21-357. Intake procedure.

(1) After receiving a report, the youth court intake unit shall promptly make a preliminary inquiry to determine whether the interest of the child, other children in the same environment or the public requires the youth court to take further action. As part of the preliminary inquiry, the youth court intake unit may request or the youth court may order the Department of Human Services, the Department of Youth Services, any successor agency or any other qualified public employee to make an investigation or report concerning the child and any other children in the same environment, and present the findings thereof to the youth court intake unit. If the youth court intake unit receives a neglect or abuse report, the youth court intake unit shall immediately forward the complaint to the Department of Human Services to promptly make an investigation or report concerning the child and any other children in the same environment and promptly present the findings thereof to the youth court intake unit. If it appears from the preliminary inquiry that the child or other children in the same environment are within the jurisdiction of the court, the youth court intake unit shall recommend to the youth court:

(a) That the youth court take no action;

(b) That an informal adjustment be made;

(c) The Department of Human Services, Division of Family and Children Services, monitor the child, family and other children in the same environment;

(d) That the child is warned or counseled informally;

(e) That the child be referred to the youth court intervention court; or

(f) That a petition be filed.

(2) The youth court shall then, without a hearing:

(a) Order that no action be taken;

(b) Order that an informal adjustment be made;

(c) Order that the Department of Human Services, Division of Family and Children Services, monitor the child, family and other children in the same environment;

(d) Order that the child is warned or counseled informally;

(e) That the child be referred to the youth intervention court; or

(f) Order that a petition be filed.

(3) If the preliminary inquiry discloses that a child needs emergency medical treatment, the judge may order the necessary treatment.

**HISTORY: Laws, 1979, ch. 506, § 43; Laws, 1986, ch. 416, § 2; Laws, 1997, ch. 440, § 11; Laws, 1998, ch. 367, § 5; Laws, 2012, ch. 410, § 1, eff from and after passage (approved Apr. 18, 2012.); Laws, 2019, ch. 466, § 25, eff from and after July 1, 2019.**

**Editor's Notes —** Laws of 2019, ch. 466, § 1 provides as follows:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

**Amendment Notes —** The 2019 amendment substituted "youth court intervention court" for "youth court drug court" in (1)(e) and substituted "youth intervention court" for "youth drug court" in (2)(e).

### JUDICIAL DECISIONS

**1. In general.**

Youth court did not err in ordering the Mississippi Department of Human Services Division of Family and Children's Services (DHS) to monitor a mother and father because the evidence of a mother's drug usage was sufficient for DHS to monitor them and the child; the mother's later, diluted negative drug test results could have created suspicion, or perhaps even an inference of drug use that merited further monitoring and investigation. E.K. v. Miss. Dep't of Child Prot. Servs., 249 So. 3d 377, 2018 Miss. LEXIS 323 (Miss. 2018).

# PETITION

## § 43-21-455. Content of petition.

### JUDICIAL DECISIONS

#### I. Under Current Law.

**1. In general.**

Petition alleging a child was neglected was insufficient because there were no facts to "show" that she was "a neglected child"; in the absence of a causal connection between the facts alleged in the petition and the petition's charge of neglect, the petition was legally insufficient to provide notice to the child, the mother, or the father of the particular circumstances that were to be inquired into at the adjudicatory proceedings. E.K. v. Miss. Dep't of Child Prot. Servs., 249 So. 3d 377, 2018 Miss. LEXIS 323 (Miss. 2018).

Youth court exceeded its authority in denying parents' motion to set aside a judgment adjudicating their child as a child in need of special care because the Department of Human Services petition did not state a basis for invoking its jurisdiction; there was no specific allegation that the child had any mental or physical illness, and thus, the youth court based its decision to place the child in custody as a child in need of special care upon evidence of neglect of the parents' other children. S.M. v. Miss. Dep't of Human Servs. (In the Interest of N.M.), 215 So. 3d 1007, 2017 Miss. App. LEXIS 202 (Miss. Ct. App. 2017).

## SUMMONS

Sec.
43-21-505. Service to conform to Uniform Rules of Youth Court Practice.

## § 43-21-501. Persons on whom served.

### JUDICIAL DECISIONS

**I. Under Current Law.**

**1. In general.**

Youth court's adjudication of a child as neglected was in violation of the mother's rights because there was no evidence that service was perfected on the mother, who was a required party to the child's neglect adjudication; the mother's presence at the adjudicatory hearing and the initial disposition hearing was not enough to find that she waived her right to service of process because the youth court did not engage her on the record to determine if she waived her rights. E.K. v. Miss. Dep't of Child Prot. Servs., 249 So. 3d 377, 2018 Miss. LEXIS 323 (Miss. 2018).

## § 43-21-505. Service to conform to Uniform Rules of Youth Court Practice.

Service of summons must conform to the Uniform Rules of Youth Court Practice.

**HISTORY: Laws, 1979, ch. 506, § 55, eff from and after July 1, 1979; Laws, 2020, ch. 436, § 1, eff from and after July 1, 2020.**

**Amendment Notes** — The 2020 amendment rewrote the section.
**Cross References** — Uniform Rules of Youth Court Practice, see U.R.Y.C.P. 1 et seq.

## § 43-21-507. Time of service.

### JUDICIAL DECISIONS

**I. Under Current Law.**

**1. In general.**

Even if a mother knowingly waived her rights, the youth court still would have erred in proceeding to the adjudication of the child as neglected because the father was not present for the hearing. E.K. v. Miss. Dep't of Child Prot. Servs., 249 So. 3d 377, 2018 Miss. LEXIS 323 (Miss. 2018).

Youth court had no jurisdiction to adjudicate a mother's son as a child in need of supervision and the mother's two other sons as sexually abused because neither the mother nor any of the children were served a summons or were present at a hearing, and the children could not waive service, so the adjudications were void. Doe v. Hinds Cty. Youth Court (In re M.M.), 220 So. 3d 285, 2017 Miss. App. LEXIS 320 (Miss. Ct. App. 2017).

## § 43-21-509. Warrant for failure to obey summons.

### JUDICIAL DECISIONS

**1. Warrant.**

Youth court's adjudication of a child as neglected was in violation of the father's rights because the father received no notice of either the adjudication hearing or the initial disposition hearing; to the extent that the father could not be found or served, the statute provides the youth court with the authority to issue a warrant to bring him into the custody of the youth court. E.K. v. Miss. Dep't of Child Prot. Servs., 249 So. 3d 377, 2018 Miss. LEXIS 323 (Miss. 2018).

## ADJUDICATION

| Sec. | |
|---|---|
| 43-21-559. | Evidence admissible. |
| 43-21-561. | Adjudication of status, standard of proof, and findings. |

## § 43-21-557. Order of proceedings.

### JUDICIAL DECISIONS

**ANALYSIS**

I. Under Current Law.

1. In general.
2. Notice.

### I. Under Current Law.

**1. In general.**

Youth court's adjudication of a child as neglected was in violation of the mother's due-process right to representation because there was no evidence that service was perfected on her; clearly indicating the importance of the mother's right to representation, the Youth Court Act reiterated the youth court's duty to make sure that a party understood her right to counsel, and it further provided a right to a continuance if the party wished to engage representation E.K. v. Miss. Dep't of Child Prot. Servs., 249 So. 3d 377, 2018 Miss. LEXIS 323 (Miss. 2018).

**2. Notice.**

Youth court's adjudication of a child as neglected was in violation of the mother's rights because there was no evidence that service was perfected on the mother, who was a required party to the child's neglect adjudication; the mother's presence at the adjudicatory hearing and the initial disposition hearing was not enough to find that she waived her right to service of process because the youth court did not engage her on the record to determine if she waived her rights. E.K. v. Miss. Dep't of Child Prot. Servs., 249 So. 3d 377, 2018 Miss. LEXIS 323 (Miss. 2018).

Youth court's adjudication of a child as neglected was in violation of the mother's due-process right to representation because there was no evidence that service was perfected on her; clearly indicating the importance of the mother's right to representation, the statute reiterated the youth court's duty to make sure that a party understood her right to counsel, and it further provided a right to a continuance if the party wished to engage representation E.K. v. Miss. Dep't of Child Prot. Servs., 249 So. 3d 377, 2018 Miss. LEXIS 323 (Miss. 2018).

Youth court had no jurisdiction to adjudicate a mother's son as a child in need of supervision and the mother's two other sons as sexually abused because neither the mother nor any of the children were served a summons or were present at a hearing, and the children could not waive service, so the adjudications were void. Doe v. Hinds Cty. Youth Court (In re

M.M.), 220 So. 3d 285, 2017 Miss. App. LEXIS 320 (Miss. Ct. App. 2017).

## § 43-21-559. Evidence admissible.

(1) In arriving at its adjudicatory decision, the youth court shall consider only evidence which has been formally admitted at the adjudicatory hearing. All testimony shall be under oath and may be in narrative form. In proceedings to determine whether a child is a delinquent child or a child in need of supervision, the youth court shall admit any evidence that would be admissible in a criminal proceeding. In proceedings to determine whether a child is a neglected child or an abused child, the youth court shall admit any evidence that would be admissible in a civil proceeding.

(2) An out-of-court admission by the child, even if otherwise admissible, shall be insufficient to support an adjudication that the child is a delinquent child unless the admission is corroborated, in whole or in part, by other competent evidence.

(3) Members of the youth court staff may appear as witnesses except that no member of the youth court staff may testify as to an admission or confession made to him.

(4)(a) No statements, admissions or confessions made by or incriminatory information obtained from a child in the course of a screening or assessment that is undertaken in conjunction with any proceedings under this chapter, including, but not limited to, that which is court-ordered, shall be admitted into evidence against the child on the issue of whether the child committed a delinquent act under this chapter or on the issue of guilt in any criminal proceedings.

(b) The provisions of paragraph (a) of this subsection are in addition to and do not override any existing statutory and constitutional prohibition on the admission into evidence in delinquency and criminal proceedings of information obtained during screening, assessment or treatment.

**HISTORY: Laws, 1979, ch. 506, § 62; Laws, 2016, ch. 438, § 13, eff from and after July 1, 2016.**

**Amendment Notes** — The 2016 amendment rewrote (4), which read "At the conclusion of the evidence, the youth court shall give the parties an opportunity to present oral argument"; and made minor stylistic changes.

### JUDICIAL DECISIONS

#### I. Under Current Law.

**2. Particular applications.**

Evidence failed to demonstrate that a child was neglected because no evidence was offered to show that the mother's fear of the father led to the child being neglected, and evidence of the mother's positive test for marijuana usage was not shown to have affected the child; the mother's marijuana usage did not negate the requirement of a causal connection between the drug usage and the neglect. E.K. v. Miss. Dep't of Child Prot. Servs., 249 So. 3d 377, 2018 Miss. LEXIS 323 (Miss. 2018).

To the extent that the supreme court or the court of appeals has held that the

Mississippi Rules of Evidence have some diminished force in youth-court adjudications, the supreme court overrules the cases. When the youth court adjudicates the ultimate issue of abuse, the Rules must be given full effect. D.T. v. Hinds Cnty. Youth Court (In re J.T.), 188 So. 3d 1192, 2016 Miss. LEXIS 165 (Miss. 2016).

Youth court erred in disregarding the Mississippi Rules of Evidence because Miss. R. Evid. 1101(a) applied the Rules to all proceedings unless otherwise provided, and Rule 1101(b) did not except youth-court adjudication hearings; both the rules of court and the Mississippi Code dictate that the Mississippi Rules of Evidence apply to abuse adjudications in youth court. D.T. v. Hinds Cnty. Youth Court (In re J.T.), 188 So. 3d 1192, 2016 Miss. LEXIS 165 (Miss. 2016).

Specific rules have been promulgated by the supreme court to govern youth-court proceedings, and where those specific provisions depart from the Mississippi Rules of Evidence, the specific youth-court rule applies; but where no specific youth-court rule supersedes the Mississippi Rules of Evidence, the Rules apply with full force and effect, and neither the Rules of Evidence, nor the Uniform Youth Court Rules allow ad hoc amendment by trial judges. D.T. v. Hinds Cnty. Youth Court (In re J.T.), 188 So. 3d 1192, 2016 Miss. LEXIS 165 (Miss. 2016).

## § 43-21-561. Adjudication of status, standard of proof, and findings.

(1) If the youth court finds on proof beyond a reasonable doubt that a child is a delinquent child or a child in need of supervision, the youth court shall enter an order adjudicating the child to be a delinquent child or a child in need of supervision.

(2) Where the petition alleges that the child is a delinquent child, the youth court may enter an order that the child is a child in need of supervision on proof beyond a reasonable doubt that the child is a child in need of supervision.

(3) If the court finds from a preponderance of the evidence that the child is a neglected child, an abused child, a dependent child or a child in need of special care the youth court shall enter an order adjudicating the child to be a neglected child, an abused child, dependent child or a child in need of special care.

(4) No decree or order of adjudication concerning any child shall recite that a child has been found guilty; but it shall recite that a child is found to be a delinquent child or a child in need of supervision or a neglected child or an abused child or a sexually abused child or a dependent child or a child in need of special care. Upon a written motion by a party, the youth court shall make written findings of fact and conclusions of law upon which it relies for the adjudication that the child is a delinquent child, a child in need of supervision, a neglected child, an abused child, a dependent child or a child in need of special care.

(5) No adjudication upon the status of any child shall operate to impose any of the civil disabilities ordinarily imposed on an adult because of a criminal conviction, nor shall any child be deemed a criminal by reason of adjudication, nor shall that adjudication be deemed a conviction. A person in whose interest proceedings have been brought in the youth court may deny, without any penalty, the existence of those proceedings and any adjudication made in those

proceedings. Except for the right of a defendant or prosecutor in criminal proceedings and a respondent or a youth court prosecutor in youth court proceedings to cross-examine a witness, including a defendant or respondent, to show bias or interest, no adjudication shall be used for impeachment purposes in any court.

(6)(a) No statements, admissions or confessions made by or incriminatory information obtained from a child in the course of a screening or assessment that is undertaken in conjunction with any proceedings under this chapter, including, but not limited to, that which is court-ordered, shall be admitted into evidence against the child on the issue of whether the child committed a delinquent act under this chapter or on the issue of guilt in any criminal proceedings.

(b) The provisions of paragraph (a) of this subsection are in addition to and do not override any existing statutory and constitutional prohibition on the admission into evidence in delinquency and criminal proceedings of information obtained during screening, assessment or treatment.

**HISTORY: Laws, 1979, ch. 506, § 63; Laws, 1980, ch. 550, § 22; Laws, 2002, ch. 410, § 1; Laws, 2010, ch. 349, § 2; Laws, 2016, ch. 438, § 14, eff from and after July 1, 2016.**

**Amendment Notes —** The 2016 amendment added (6).

## JUDICIAL DECISIONS

### ANALYSIS

I. Under Current Law.

2. Burden of proof.
3. Evidence; examination of witnesses.
5. Particular applications.

### I. Under Current Law.

**2. Burden of proof.**

Because the youth court committed legal error by applying the incorrect evidentiary standard of preponderance of the evidence in considering whether to adjudicate defendant juvenile as delinquent, the court reversed and vacated the youth court's order. M.B. v. Youth Court of Calhoun Cty., — So. 3d —, 2020 Miss. App. LEXIS 13 (Miss. Ct. App. Jan. 14, 2020).

**3. Evidence; examination of witnesses.**

State failed to produce sufficient evidence to prove that a child had been sexually abused because it produced no evidence that the child's facially ambiguous statement described abuse since the statement could describe sexual abuse or innocent contact, and no additional evidence was provided to show abuse; the parents provided an innocent explanation, and neither the Mississippi Department of Human Services nor the investigative guardian ad litem discovered evidence of abuse. D.T. v. Hinds Cnty. Youth Court (In re J.T.), 188 So. 3d 1192, 2016 Miss. LEXIS 165 (Miss. 2016).

**5. Particular applications.**

It was no error to exclude a witness's juvenile adjudications because defendant (1) sought to use the adjudications for general impeachment purposes and (2) did not explain what defendant expected the adjudications to show or how the adjudications would show bias or interest. Johnson v. State, 268 So. 3d 534, 2019 Miss. LEXIS 78 (Miss. 2019).

Evidence failed to demonstrate that a child was neglected because no evidence was offered to show that the mother's fear of the father led to the child being neglected, and evidence of the mother's positive test for marijuana usage was not shown to have affected the child; the mother's marijuana usage did not negate the requirement of a causal connection between the drug usage and the neglect. E.K. v. Miss. Dep't of Child Prot. Servs., 249 So. 3d 377, 2018 Miss. LEXIS 323 (Miss. 2018).

# DISPOSITION

Sec.
43-21-603. Disposition hearing procedure.
43-21-609. Dispositional alternatives in neglect and abuse cases.
43-21-613. Modification of disposition orders, probation or parole.

## § 43-21-601. Scheduling of disposition hearing.

### JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Appeal dismissed

**1. In general.**

Hearsay and opinion evidence may be considered in disposition hearings, the youth-court equivalent of adult sentencing hearings; this comports with Miss. R. Evid. 1101(b), which includes sentencing and disposition hearings in its exceptions to the Mississippi Evidence Rules' applicability. D.T. v. Hinds Cnty. Youth Court (In re J.T.), 188 So. 3d 1192, 2016 Miss. LEXIS 165 (Miss. 2016).

**2. Appeal dismissed**

In a case in which the father appealed an order adjudicating his children as abused, his appeal was dismissed based on lack of jurisdiction because the father appealed directly from the youth court's adjudication order without first allowing the youth court or the chancery court to conduct a disposition hearing and enter a disposition order; and there was not yet a final appealable order of disposition as the youth court's disposition order expressly stated that the youth court was withholding disposition, relinquishing jurisdiction, and transferring the matter to chancery court, and, when the father noticed the appeal, neither the youth court nor the chancery court had completed the statutorily required steps antecedent to a proper appeal. C.R. v. Miss. Dep't of Child Prot. Servs., — So. 3d —, 2019 Miss. App. LEXIS 599 (Miss. Ct. App. Dec. 17, 2019).

## § 43-21-603. Disposition hearing procedure.

(1) At the beginning of each disposition hearing, the judge shall inform the parties of the purpose of the hearing.

(2) All testimony shall be under oath unless waived by all parties and may be in narrative form. The court may consider any evidence that is material and relevant to the disposition of the cause, including hearsay and opinion evidence. At the conclusion of the evidence, the youth court shall give the parties an opportunity to present oral argument.

(3) If the child has been adjudicated a delinquent child, before entering a disposition order, the youth court should consider, among others, the following relevant factors:

(a) The nature of the offense;

(b) The manner in which the offense was committed;

(c) The nature and number of a child's prior adjudicated offenses;

(d) The child's need for care and assistance;

(e) The child's current medical history, including medication and diagnosis;

(f) The child's mental health history, which may include, but not be limited to, the Massachusetts Youth Screening Instrument version 2 (MAYSI-2);

(g) Copies of the child's cumulative record from the last school of record, including special education records, if applicable;

(h) Recommendation from the school of record based on areas of remediation needed;

(i) Disciplinary records from the school of record; and

(j) Records of disciplinary actions outside of the school setting.

(4) If the child has been adjudicated a child in need of supervision, before entering a disposition order, the youth court should consider, among others, the following relevant factors:

(a) The nature and history of the child's conduct;

(b) The family and home situation; and

(c) The child's need of care and assistance.

(5) If the child has been adjudicated a neglected child or an abused child, before entering a disposition order, the youth court shall consider, among others, the following relevant factors:

(a) The child's physical and mental conditions;

(b) The child's need of assistance;

(c) The manner in which the parent, guardian or custodian participated in, tolerated or condoned the abuse, neglect or abandonment of the child;

(d) The ability of a child's parent, guardian or custodian to provide proper supervision and care of a child; and

(e) Relevant testimony and recommendations, where available, from the foster parent of the child, the grandparents of the child, the guardian ad litem of the child, representatives of any private care agency that has cared for the child, the family protection worker or family protection specialist assigned to the case, and any other relevant testimony pertaining to the case.

(6) After consideration of all the evidence and the relevant factors, the youth court shall enter a disposition order that shall not recite any of the facts or circumstances upon which the disposition is based, nor shall it recite that a child has been found guilty; but it shall recite that a child is found to be a delinquent child, a child in need of supervision, a neglected child or an abused child.

(7) If the youth court orders that the custody or supervision of a child who has been adjudicated abused or neglected be placed with the Department of Human Services or any other person or public or private agency, other than the child's parent, guardian or custodian, the youth court shall find and the disposition order shall recite that:

(a)(i) Reasonable efforts have been made to maintain the child within his own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody; or

(ii) The circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and that there is no reasonable alternative to custody; and

(b) That the effect of the continuation of the child's residence within his own home would be contrary to the welfare of the child and that the placement of the child in foster care is in the best interests of the child; or

(c) Reasonable efforts to maintain the child within his home shall not be required if the court determines that:

(i) The parent has subjected the child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse and sexual abuse; or

(ii) The parent has been convicted of murder of another child of that parent, voluntary manslaughter of another child of that parent, aided or abetted, attempted, conspired or solicited to commit that murder or voluntary manslaughter, or a felony assault that results in the serious bodily injury to the surviving child or another child of that parent; or

(iii) The parental rights of the parent to a sibling have been terminated involuntarily; and

(iv) That the effect of the continuation of the child's residence within his own home would be contrary to the welfare of the child and that placement of the child in foster care is in the best interests of the child.

Once the reasonable efforts requirement is bypassed, the court shall have a permanency hearing under Section 43-21-613 within thirty (30) days of the finding.

(8) Upon a written motion by a party, the youth court shall make written findings of fact and conclusions of law upon which it relies for the disposition order. If the disposition ordered by the youth court includes placing the child in the custody of a training school, an admission packet shall be prepared for the child that contains the following information:

(a) The child's current medical history, including medications and diagnosis;

(b) The child's mental health history;

(c) Copies of the child's cumulative record from the last school of record, including special education records, if reasonably available;

(d) Recommendation from the school of record based on areas of remediation needed;

(e) Disciplinary records from the school of record; and

(f) Records of disciplinary actions outside of the school setting, if reasonably available.

Only individuals who are permitted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) shall have access to a child's medical records which are contained in an admission packet. The youth court shall provide the admission packet to the training school at or before the child's arrival at the training school. The admittance of any child to a training school shall take place between the hours of 8:00 a.m. and 3:00 p.m. on designated admission days.

(9) When a child in the jurisdiction of the Youth Court is committed to the custody of the Mississippi Department of Human Services and is believed to be in need of treatment for a mental or emotional disability or infirmity, the Department of Human Services shall file an affidavit alleging that the child is in need of mental health services with the Youth Court. The Youth Court shall refer the child to the appropriate community mental health center for evaluation pursuant to Section 41-21-67. If the prescreening evaluation recommends residential care, the Youth Court shall proceed with civil commitment pursuant to Sections 41-21-61 et seq., 43-21-315 and 43-21-611, and the Department of Mental Health, once commitment is ordered, shall provide appropriate care, treatment and services for at least as many adolescents as were provided services in fiscal year 2004 in its facilities.

(10) Any screening and assessment examinations ordered by the court may aid in dispositions related to delinquency, but no statements or admissions made during the course thereof may be admitted into evidence against the child on the issue of whether the child committed a delinquent act.

**HISTORY: Laws, 1979, ch. 506, § 65; Laws, 1985, ch. 486, § 7; Laws, 1997, ch. 440, § 13; Laws, 1998, ch. 516, § 12; Laws, 1999, ch. 569, § 2; Laws, 2004, ch. 443, § 1; Laws, 2004, ch. 489, § 5; Laws, 2004, ch. 549, § 1; Laws, 2005, ch. 535, § 1; Laws, 2006, ch. 600, § 6; Laws, 2016, ch. 438, § 15, eff from and after July 1, 2016.**

**Amendment Notes** — The 2016 amendment added (10).

## JUDICIAL DECISIONS

### ANALYSIS

I. Under Current Law.

0.5. Applicability.
2. Evidence.
3. Appeal dismissed.

### I. Under Current Law.

**0.5. Applicability.**

Specific rules have been promulgated by the supreme court to govern youth-court proceedings, and where those specific provisions depart from the Mississippi Rules of Evidence, the specific youth-court rule applies; but where no specific youth-court rule supersedes the Mississippi Rules of Evidence, the Rules apply with full force and effect, and neither the Rules of Evidence, nor the Uniform Youth Court Rules allow ad hoc amendment by trial judges. D.T. v. Hinds Cnty. Youth Court (In re J.T.), 188 So. 3d 1192, 2016 Miss. LEXIS 165 (Miss. 2016).

**2. Evidence.**

Hearsay and opinion evidence may be considered in disposition hearings, the youth-court equivalent of adult sentencing hearings; this comports with Miss. R. Evid. 1101(b), which includes sentencing and disposition hearings in its exceptions to the Mississippi Evidence Rules' applicability. D.T. v. Hinds Cnty. Youth Court (In re J.T.), 188 So. 3d 1192, 2016 Miss. LEXIS 165 (Miss. 2016).

To the extent that the supreme court or the court of appeals has held that the Mississippi Rules of Evidence have some diminished force in youth-court adjudications, the supreme court overrules the cases. When the youth court adjudicates the ultimate issue of abuse, the Rules must be given full effect. D.T. v. Hinds Cnty. Youth Court (In re J.T.), 188 So. 3d 1192, 2016 Miss. LEXIS 165 (Miss. 2016).

Youth court erred in disregarding the Mississippi Rules of Evidence because Miss. R. Evid. 1101(a) applied the Rules to all proceedings unless otherwise provided, and Rule 1101(b) did not except youth-court adjudication hearings; both the rules of court and the Mississippi Code dictate that the Mississippi Rules of Evidence apply to abuse adjudications in youth court. D.T. v. Hinds Cnty. Youth Court (In re J.T.), 188 So. 3d 1192, 2016 Miss. LEXIS 165 (Miss. 2016).

**3. Appeal dismissed.**

In a case in which the father appealed an order adjudicating his children as abused, his appeal was dismissed based on lack of jurisdiction because the father appealed directly from the youth court's adjudication order without first allowing the youth court or the chancery court to conduct a disposition hearing and enter a disposition order; and there was not yet a final appealable order of disposition as the youth court's disposition order expressly stated that the youth court was withholding disposition, relinquishing jurisdiction, and transferring the matter to chancery court, and, when the father noticed the appeal, neither the youth court nor the chancery court had completed the statutorily required steps antecedent to a proper appeal. C.R. v. Miss. Dep't of Child Prot. Servs., — So. 3d —, 2019 Miss. App. LEXIS 599 (Miss. Ct. App. Dec. 17, 2019).

Specific rules have been promulgated by the supreme court to govern youth-court proceedings, and where those specific provisions depart from the Mississippi Rules of Evidence, the specific youth-court rule applies; but where no specific youth-court rule supersedes the Mississippi Rules of Evidence, the Rules apply with full force and effect, and neither the Rules of Evidence, nor the Uniform Youth Court Rules allow ad hoc amendment by trial judges. D.T. v. Hinds Cnty. Youth Court (In re J.T.), 188 So. 3d 1192, 2016 Miss. LEXIS 165 (Miss. 2016).

## § 43-21-609. Dispositional alternatives in neglect and abuse cases.

In neglect and abuse cases, the disposition order may include any of the following alternatives, giving precedence in the following sequence:

(a) Release the child without further action;

(b) Place the child in the custody of his parents, a relative or other person subject to any conditions and limitations as the court may prescribe. If the court finds that temporary relative placement, adoption or foster care placement is inappropriate, unavailable or otherwise not in the best interest of the child, durable legal custody may be granted by the court to any person subject to any limitations and conditions the court may prescribe; such durable legal custody will not take effect unless the child or children have been in the physical custody of the proposed durable custodians for at least six (6) months under the supervision of the Department of Human Services. The requirements of Section 43-21-613 as to disposition review hearings do not apply to those matters in which the court has granted durable legal custody. In such cases, the Department of Human Services shall be released from any oversight or monitoring responsibilities;

(c)(i) Grant durable legal relative guardianship to a relative or fictive kin licensed as a foster parent if the licensed relative foster parent or licensed fictive kin foster parent exercised physical custody of the child for at least six (6) months before the grant of durable legal relative guardianship and the Department of Child Protection Services had legal custody or exercised supervision of the child for at least six (6) months. In order to establish durable legal relative guardianship, the youth court must find the following:

1. That reunification has been determined to be inappropriate;

2. That the relative guardian or fictive kin guardian shows full commitment to the care, shelter, education, nurture, and reasonable medical care of the child; and

3. That the youth court consulted with any child twelve (12) years of age or older before granting durable legal relative guardianship.

(ii) The requirements of Section 43-21-613 as to disposition review hearings do not apply to a hearing concerning durable legal relative guardianship. However, the Department of Child Protection Services must conduct an annual review and recertification of the durable legal relative guardianship to determine whether it remains in the best interest of the child. If a material change in circumstances occurs adverse to the best interest of the child, the parent, relative guardian, fictive kin guardian, or Department of Child Protection Services may petition the court to review the durable legal relative guardianship;

(d) Order terms of treatment calculated to assist the child and the child's parent, guardian or custodian which are within the ability of the parent, guardian or custodian to perform;

(e) Order youth court personnel, the Department of Child Protection Services or child care agencies to assist the child and the child's parent, guardian or custodian to secure social or medical services to provide proper supervision and care of the child;

(f) Give legal custody of the child to any of the following but in no event to any state training school:

(i) The Department of Child Protection Services for appropriate placement; or

(ii) Any private or public organization, preferably community-based, able to assume the education, care and maintenance of the child, which has been found suitable by the court. Prior to assigning the custody of any child to any private institution or agency, the youth court through its designee shall first inspect the physical facilities to determine that they provide a reasonable standard of health and safety for the child;

(g) If the court makes a finding that custody is necessary as defined in Section 43-21-301(3)(b), and that the child, in the action pending before the youth court had not previously been taken into custody, the disposition order shall recite that the effect of the continuation of the child's residing within his or her own home would be contrary to the welfare of the child, that the placement of the child in foster care is in the best interests of the child, and unless the reasonable efforts requirement is bypassed under Section 43-21-603(7)(c), the order also must state:

(i) That reasonable efforts have been made to maintain the child within his or her own home, but that the circumstances warrant his or her removal, and there is no reasonable alternative to custody; or

(ii) The circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his or her own home, and there is no reasonable alternative to custody; or

(iii) If the court makes a finding in accordance with subparagraph (ii) of this paragraph, the court shall order that reasonable efforts be made towards the reunification of the child with his or her family; or

(h) If the court had, before the disposition hearing in the action pending before the court, taken the child into custody, the judge or referee shall determine, and the youth court order shall recite that reasonable efforts were made by the Department of Child Protection Services to finalize the child's permanency plan that was in effect on the date of the disposition hearing.

**HISTORY: Laws, 1979, ch. 506, § 68; Laws, 1980, ch. 550, § 25; Laws, 1998, ch. 516, § 7; Laws, 1999, ch. 569, § 3; Laws, 2004, ch. 417, § 3; Laws, 2017, ch. 427, § 4, eff from and after July 1, 2017; Laws, 2020, ch. 327, § 1, eff from and after July 1, 2020.**

**Amendment Notes** — The 2017 amendment substituted "Department of Child Protection" for "Department of Human" throughout; substituted "at least six (6) months" for "at least one (1) year" in the second sentence of (b); and added (c), redesignated the remaining paragraphs accordingly, and made related stylistic changes.

The 2020 amendment, rewrote (c)(i)1, which read: "That both reunification and adoption have been determined to be inappropriate."

## § 43-21-611. Dispositional alternatives for children in need of special care.

### JUDICIAL DECISIONS

**1. Child in need of special care.**

Youth court exceeded its authority in denying parents' motion to set aside a judgment adjudicating their child as a child in need of special care because the Department of Human Services petition did not state a basis for invoking its jurisdiction; there was no specific allegation that the child had any mental or physical illness, and thus, the youth court based its decision to place the child in custody as a child in need of special care upon evidence of neglect of the parents' other children. S.M. v. Miss. Dep't of Human Servs. (In the Interest of N.M.), 215 So. 3d 1007, 2017 Miss. App. LEXIS 202 (Miss. Ct. App. 2017).

## § 43-21-613. Modification of disposition orders, probation or parole.

(1) If the youth court finds, after a hearing which complies with the sections governing adjudicatory hearings, that the terms of a delinquency or child in need of supervision disposition order, probation or parole have been violated, the youth court may, in its discretion, revoke the original disposition and make any disposition which it could have originally ordered. The hearing shall be initiated by the filing of a petition that complies with the sections governing petitions in this chapter and that includes a statement of the youth court's original disposition order, probation or parole, the alleged violation of that order, probation or parole, and the facts which show the violation of that order, probation or parole. Summons shall be served in the same manner as summons for an adjudicatory hearing.

(2) On motion of a child or a child's parent, guardian or custodian, the youth court may, in its discretion, conduct an informal hearing to review the disposition order. If the youth court finds a material change of circumstances relating to the disposition of the child, the youth court may modify the disposition order to any appropriate disposition of equal or greater precedence which the youth court could have originally ordered.

(3)(a) Unless the youth court's jurisdiction has been terminated, all disposition orders for supervision, probation or placement of a child with an individual or an agency shall be reviewed by the youth court judge or referee at least annually to determine if continued placement, probation or supervision is in the best interest of the child or the public. For children who have been adjudicated abused or neglected, the youth court shall conduct a permanency hearing within twelve (12) months after the earlier of:

(i) An adjudication that the child has been abused or neglected; or

(ii) The date of the child's removal from the allegedly abusive or neglectful custodian/parent. Notice of such hearing shall be given in accordance with the provisions of Section 43-21-505(5). In conducting the hearing, the judge or referee shall require a written report and may require information or statements from the child's youth court counselor, parent, guardian or custodian, which includes, but is not limited to, an evaluation of the child's progress and recommendations for further supervision or treatment. The judge or referee shall, at the permanency hearing determine the future status of the child, including, but not limited to, whether the child should be returned to the parent(s) or placed with suitable relatives, placed for adoption, placed for the purpose of establishing durable legal custody or should, because of the child's special needs or circumstances, be continued in foster care on a permanent or long-term basis. If the child is in an out-of-state placement, the hearing shall determine whether the out-of-state placement continues to be appropriate and in the best interest of the child. At the permanency hearing the judge or referee shall determine, and the youth court order shall recite that reasonable efforts were made by the Department of Child Protection Services to finalize the child's permanency plan that was in effect on the date of the permanency hearing. The judge or referee may find that reasonable efforts to maintain the child within his home shall not be required in accordance with Section 43-21-603(7)(c), and that the youth court shall continue to conduct permanency hearings for a child who has been adjudicated abused or neglected, at least annually thereafter, for as long as the child remains in the custody of the Mississippi Department of Child Protection Services.

(b) The court may find that the filing of a termination of parental rights petition is not in the child's best interest if:

(i) The child is being cared for by a relative; and/or

(ii) The Department of Child Protection Services has documented compelling and extraordinary reasons why termination of parental rights would not be in the best interests of the child.

(c) The provisions of this subsection shall also apply to review of cases involving a dependent child; however, such reviews shall take place not less frequently than once each one hundred eighty (180) days, or upon the request of the child's attorney, a parent's attorney, or a parent as deemed appropriate by the youth court in protecting the best interests of the child. A dependent child shall be ordered by the youth court judge or referee to be returned to the custody and home of the child's parent, guardian or custodian unless the judge or referee, upon such review, makes a written finding that the return of the child to the home would be contrary to the child's best interests.

(d) Reviews are not to be conducted unless explicitly ordered by the youth court concerning those cases in which the court has granted durable legal custody. In such cases, the Department of Child Protection Services shall be released from any oversight or monitoring responsibilities, and relieved of physical and legal custody and supervision of the child.

(4) The provisions of this section do not apply to proceedings concerning durable legal relative guardianship.

**HISTORY: Laws, 1979, ch. 506, § 69; Laws, 1980, ch. 550, § 27; Laws, 1985, ch. 486, § 8; Laws, 1996, ch. 409, § 1; Laws, 1997, ch. 440, § 14; Laws, 1998, ch. 516, § 8; Laws, 1999, ch. 569, § 4; Laws, 2002, ch. 342, § 1; Laws, 2003, ch. 450, § 1; Laws, 2004, ch. 417, § 4; Laws, 2017, ch. 427, § 5, eff from and after July 1, 2017; Laws, 2019, ch. 464, § 7, eff from and after July 1, 2019.**

**Amendment Notes** — The 2017 amendment added (4).

The 2019 amendment substituted "Department of Child Protection Services" for "Department of Human Services" four times; and added "or upon the request of…the best interests of the child" at the end of the first sentence of (3)(c).

## MISSISSIPPI JUVENILE DETENTION FACILITIES LICENSING ACT

Sec.

43-21-901. Short title.
43-21-903. Purpose.
43-21-905. Definitions.
43-21-907. Licensing agencies; powers and duties.
43-21-909. Identification of existence of issues that might prevent licensure; license required to own, operate and maintain juvenile detention facility.
43-21-911. Biennial renewal of license.
43-21-913. Compliance inspections by licensing agency.
43-21-915. Denial, refusal to renew, suspension, revocation or restriction of license.

### § 43-21-901. Short title.

Sections 43-21-901 through 43-21-915 and Section 43-21-207 shall be cited as the "Mississippi Juvenile Detention Facilities Licensing Act."

**HISTORY: Laws, 2016, ch. 438, § 1, eff from and after July 1, 2016.**

**Editor's Notes** — Laws of 2016, ch. 438, § 16, provides:

"SECTION 16. Sections 1 through 8 and Section 11 of this act shall be codified in

Chapter 21, Title 43, Mississippi Code of 1972."

Sections 1 through 8 and Section 11 of Chapter 438, Laws of 2016, have been codified as Sections 43-21-901 through 43-21-915 and Section 43-21-207, respectively.

## § 43-21-903. Purpose.

The purpose of Sections 43-21-901 through 43-21-915 is to protect and promote the health and safety of the children who are detained in juvenile detention centers in this state by providing for the licensing of juvenile detention facilities to assure that certain minimum standards are maintained.

**HISTORY: Laws, 2016, ch. 438, § 2, eff from and after July 1, 2016.**

**Editor's Notes —** Laws of 2016, ch. 438, § 16, provides:

"SECTION 16. Sections 1 through 8 and Section 11 of this act shall be codified in Chapter 21, Title 43, Mississippi Code of 1972."

Sections 1 through 8 and Section 11 of Chapter 438, Laws of 2016, have been codified as Sections 43-21-901 through 43-21-915 and Section 43-21-207, respectively.

## § 43-21-905. Definitions.

As used in Sections 43-21-901 through 43-21-915, the following words shall have the following meanings:

(a) "Facility administrator" means the principal official of the facility.

(b) "Facility staff" means all employees of the facility who are under the supervision of the facility administrator.

(c) "Juvenile detention facility" and "facility" are synonymous and each means a secure facility that house children who are charged with a delinquent act as defined in Section 43-21-105(j).

(d) "Licensing agency" means the Juvenile Facilities Monitoring Unit of the Department of Public Safety.

**HISTORY: Laws, 2016, ch. 438, § 3, eff from and after July 1, 2016.**

**Editor's Notes —** Laws of 2016, ch. 438, § 16, provides:

"SECTION 16. Sections 1 through 8 and Section 11 of this act shall be codified in Chapter 21, Title 43, Mississippi Code of 1972."

Sections 1 through 8 and Section 11 of Chapter 438, Laws of 2016, have been codified as Sections 43-21-901 through 43-21-915 and Section 43-21-207, respectively.

## § 43-21-907. Licensing agencies; powers and duties.

(1) The licensing agency shall have the following powers and duties, in addition to the other duties prescribed by law:

(a) To adopt the licensing standards set forth by the Juvenile Detention and Alternatives Taskforce's 2014 report;

(b) To promulgate future rules and regulations concerning the licensing and regulation of juvenile detention facilities;

(c) To issue, deny, suspend, revoke, restrict, or otherwise take disciplinary action against juvenile detention facilities;

(d) To provide the training required by the rules and regulations promulgated by the licensing agency to all facility administrators and facility staff; and

(e) To have such other powers as may be required to carry out the provisions of Sections 43-21-901 through 43-21-915.

(2) The licensing agency shall require a criminal records background check and a child abuse registry check for all facility administrators and facility staff of a juvenile detention facility. The Department of Human Services has the authority to disclose to the licensing agency any potential applicant whose name is listed on the Child Abuse Central Registry or has a pending administrative review. That information shall remain confidential.

(3) The licensing agency shall have the authority to exclude individuals or entities for prospective or current employment on the basis of a particular crime or crimes or a substantiated finding of child abuse or neglect.

(4) Information in the possession of the licensing agency concerning the license of a juvenile detention facility may be disclosed to the public, but the information shall not be disclosed in a manner that would identify children detained in the facility. Nothing in this section affects the agency's authority to release findings of investigations into allegations of abuse under either Section 43-21-353(8) or Section 43-21-257.

(5) The Mississippi Department of Education is responsible for promulgating rules and regulations related to the education of all children housed in a juvenile detention facility. The Mississippi Department of Education must conduct inspections of the facility's educational services at least annually or more often as deemed necessary. After each inspection, the department must provide the licensing agency with its determination of the facility's compliance with the education provisions. The licensing agency shall use the information in its determination of the facility's eligibility for licensure.

**HISTORY: Laws, 2016, ch. 438, § 4, eff from and after July 1, 2016.**

**Editor's Notes** — Laws of 2016, ch. 438, § 16, provides:

"SECTION 16. Sections 1 through 8 and Section 11 of this act shall be codified in Chapter 21, Title 43, Mississippi Code of 1972."

Sections 1 through 8 and Section 11 of Chapter 438, Laws of 2016, have been codified as Sections 43-21-901 through 43-21-915 and Section 43-21-207, respectively.

Laws of 2012, ch. 564, § 4, as amended by Laws of 2014, ch. 471, § 1, provides as follows:

"SECTION 4. (1) There is established the Juvenile Detention and Alternatives Task Force. The purpose of the task force is to support the expansion of juvenile detention alternatives and utilize the proposed licensing standards that were included in the January 2014 report of the task force to make further recommendations regarding the licensure of juvenile detention facilities throughout the state.

"(2) The task force shall be composed of the following members who shall be appointed no later than July 1, 2014, if there are to be any changes made by any entity or agency that is a current member of the task force:

"(a) The statewide coordinator of the Annie E. Casey Juvenile Detention Alternatives Initiative, or his designee;

"(b) The Director of the Division of Youth Services of the Mississippi Department of Human Services, or his designee;

"(c) A representative from the Juvenile Facilities Monitoring Unit appointed by the

Commissioner of the Mississippi Department of Public Safety;

"(d) Two (2) youth court judges appointed by the Mississippi Council of Youth Court Judges;

"(e) A representative from the Mississippi Sheriffs' Association appointed by the President of the Association;

"(f) Four (4) representatives from counties of this state that are engaged in the Juvenile Detention Alternatives Initiative, to be appointed by Mississippi's statewide coordinator of the Juvenile Detention Alternatives Initiative;

"(g) A representative from the Department of Mental Health appointed by the Executive Director of the Department;

"(h) Six (6) representatives from the Mississippi Juvenile Detention Directors Association appointed by the President of the Association;

"(i) Two (2) county supervisors from counties with juvenile detention centers, appointed by the President of the Mississippi Association of County Detention Supervisors;

"(j) Two (2) county administrators from counties with juvenile detention centers, appointed by the President of the Mississippi Association of Supervisors;

"(k) The State Superintendent of Education, or his designee; and

"(*l*) Two (2) representatives from state or local government, one (1) to be appointed by the Chairperson of the House Youth and Family Affairs Committee and one (1) to be appointed by the Chairperson of the Senate Judiciary B Committee.

"(3) The task force shall hold at least three (3) meetings before issuing its report and shall hold its first meeting no later than August 1, 2014, on the call of the statewide coordinator of the Annie E. Casey Juvenile Detention Alternatives Initiative, or his designee. At its first meeting, the task force shall elect a chairperson and a vice chairperson from its membership and shall adopt rules for transacting business and keeping records. All meetings of the task force will be open to the public and shall provide opportunities for input from representatives of any private or public entities that are involved with the juvenile justice system. Notice of all meetings shall be given as provided in the Open Meetings Act.

"(4) On or before November 1, 2014, the task force shall file a report with the Secretary of the Senate and the Clerk of the House of Representatives that includes the following:

"(a) A plan for supporting juvenile detention alternatives;

"(b) A plan for reducing the financial burden incurred by counties for providing juvenile detention services, increasing cross-county collaboration, reducing duplication of services, and maximizing support from federal, state and private sources;

"(c) Plan of implementing the proposed juvenile detention licensing standards that were included in the January 2014 report of the task force, and in order to develop the plan described under this subsection, the task force shall request data from all counties that operate juvenile detention centers pertaining to, but not limited to, budgets, staffing ratios and current medical and mental health services;

"(d) A recommendation of which state agency should be authorized to promulgate, adopt and enforce the proposed licensing standards and any other regulations for juvenile detention centers, including the date all facilities should be licensed;

"(e) Any recommended legislation for consideration in the 2015 Legislative Session; and

"(f) Any other issues related to juvenile detention centers or alternatives to juvenile detention deemed relevant by the task force.

"(5) The task force shall be assigned to the Division of Youth Services of the Department of Human Services for administrative purposes only, and the Division of Youth Services shall designate staff to assist the task force.

"(6) There is created an advisory group established for the purpose of providing advice, input and information to the Juvenile Detention and Alternatives Task Force. Advisory group members shall receive notice of task force meetings and shall, at the request of the Chairperson of the task force, provide assistance with research and analysis. The advisory group shall be composed of the following members who shall be appointed no later than July 15, 2014, if there are to be changes made from the current advisory board:

"(a) Two (2) representatives from children's advocacy nonprofit organizations, one (1) to be appointed by the Chairperson of the House Youth and Family Affairs Committee and one (1) to be appointed by the Chairperson of the Senate Judiciary B Committee;

"(b) Two (2) representatives of a victim's rights organization appointed by the Attorney General;

"(c) Two (2) representatives who are parents or guardians of a youth involved with the juvenile justice system, one (1) to be appointed by the Chairperson of the House Youth and Family Affairs Committee and one (1) to be appointed by the Chairperson of the Senate Judiciary B Committee;

"(d) Two (2) youths who have experience with juvenile detention appointed by the Council of Youth Court Judges;

"(e) Three (3) members appointed by the Chairperson of the Juvenile Detention and Alternatives Task Force;

"(f) Two (2) representatives who are from Mississippi public universities and have substantial experience with juvenile justice or criminal justice administration, to be appointed by the Commissioner of Higher Education;

"(g) A representative from the Mississippi Juvenile Justice Advisory Committee appointed by the Chairperson of the Committee;

"(h) A representative from the Mississippi Prosecutor's Association;

"(i) A representative from the Mississippi Public Defender Association; and

"(j) The Chairperson of the House Youth and Family Affairs Committee and the Chairperson of the Senate Judiciary B Committee, or their designees.

"(7) This section shall stand repealed on July 1, 2015.

## § 43-21-909. Identification of existence of issues that might prevent licensure; license required to own, operate and maintain juvenile detention facility.

Beginning October 1, 2016, the licensing agency shall conduct mock reviews of all juvenile detention facilities and determine what, if any, issues exist that may prevent licensure pursuant to the adopted rules and regulations. From and after October 1, 2017, no county or state entity shall establish, own, operate, and maintain a juvenile detention facility without a license issued under Sections 43-21-901 through 43-21-915.

**HISTORY: Laws, 2016, ch. 438, § 5, eff from and after July 1, 2016.**

**Editor's Notes** — Laws of 2016, ch. 438, § 16, provides:

"SECTION 16. Sections 1 through 8 and Section 11 of this act shall be codified in Chapter 21, Title 43, Mississippi Code of 1972."

Sections 1 through 8 and Section 11 of Chapter 438, Laws of 2016, have been codified as Sections 43-21-901 through 43-21-915 and Section 43-21-207, respectively.

## § 43-21-911. Biennial renewal of license.

A license issued under Sections 43-21-901 through 43-21-915 must be renewed every two (2) years.

**HISTORY: Laws, 2016, ch. 438, § 6, eff from and after July 1, 2016.**

**Editor's Notes** — Laws of 2016, ch. 438, § 16, provides:

"SECTION 16. Sections 1 through 8 and Section 11 of this act shall be codified in Chapter 21, Title 43, Mississippi Code of 1972."

Sections 1 through 8 and Section 11 of Chapter 438, Laws of 2016, have been codified as Sections 43-21-901 through 43-21-915 and Section 43-21-207, respectively.

## § 43-21-913. Compliance inspections by licensing agency.

The licensing agency shall make inspections to determine ongoing compliance with the laws and regulations governing the licensure of juvenile detention facilities. Inspections shall be made at least twice a year, but additional inspections may be made as often as deemed necessary by the licensing agency. The licensing agency is not required to provide any notice to the facility before making an inspection.

**HISTORY: Laws, 2016, ch. 438, § 7, eff from and after July 1, 2016.**

**Editor's Notes** — Laws of 2016, ch. 438, § 16, provides:

"SECTION 16. Sections 1 through 8 and Section 11 of this act shall be codified in Chapter 21, Title 43, Mississippi Code of 1972."

Sections 1 through 8 and Section 11 of Chapter 438, Laws of 2016, have been codified as Sections 43-21-901 through 43-21-915 and Section 43-21-207, respectively.

## § 43-21-915. Denial, refusal to renew, suspension, revocation or restriction of license.

(1) The licensing agency may deny or refuse to renew a license for any of the reasons set forth in subsection (3) of this section.

(2) Before the licensing agency may deny or refuse to renew a license, the county or contractor operating the juvenile detention facility is entitled to a hearing before the director of the licensing agency in order to show cause why the license should not be denied or should be renewed.

(3) The licensing agency may suspend, revoke, or restrict the license of any juvenile detention center upon one or more of the following grounds:

(a) Fraud, misrepresentation or concealment of material facts;

(b) Violation of any of the provisions of Sections 43-21-901 through 43-21-915 or any of the regulations governing the licensing and regulation of juvenile detention facilities promulgated by the licensing agency;

(c) Any conduct, or failure to act that is found or determined by the licensing agency to threaten the health and safety of children at the facility;

(d) Failure of a juvenile detention facility to conduct background checks as required under Section 43-21-907.

(e) Information that is received by the licensing agency as a result of the criminal records background check and the child abuse registry check on all facility administrators and facility staff under Section 43-21-907.

(4) The licensing agency shall develop rules and regulations related to the development and implementation of corrective action plans to address violations at facilities before a revocation, suspension, or restriction of the facility's license.

(5) Before the licensing agency may suspend, revoke or restrict the license of a facility, the county or contractor affected by that decision is entitled to a hearing before the director of the licensing agency in which it may show cause why the license should not be suspended, revoked, or restricted.

(6) A juvenile detention facility that disagrees with or is aggrieved by the licensing agency in regard to the denial, refusal to renew, or the suspension, revocation, or restriction of the license for the juvenile detention facility may appeal to the chancery court of the county in which the facility is located. The appeal shall be filed no later than thirty (30) days after the licensee receives written notice of the final administrative action by the licensing agency.

**HISTORY: Laws, 2016, ch. 438, § 8, eff from and after July 1, 2016.**

**Editor's Notes —** Laws of 2016, ch. 438, § 16, provides:

"SECTION 16. Sections 1 through 8 and Section 11 of this act shall be codified in Chapter 21, Title 43, Mississippi Code of 1972."

Sections 1 through 8 and Section 11 of Chapter 438, Laws of 2016, have been codified as Sections 43-21-901 through 43-21-915 and Section 43-21-207, respectively.

# CHAPTER 26.

# DEPARTMENT OF CHILD PROTECTION SERVICES

Sec.
43-26-1. Department of Child Protection Services created; Commissioner of Child Protection Services; Department shall be subagency of Department of Human Services; transfer of programs and services under certain statutes from Office of Family and Children's Services to Department of Child Protection Services; employment of Coordinator of Services for Victims of Human Trafficking and Commercial Sexual Exploitation; duties; standard operating procedures for investigation, custody and services provided alleged victims of human trafficking and commercial sexual exploitation.

## § 43-26-1. Department of Child Protection Services created; Commissioner of Child Protection Services; Department shall be subagency of Department of Human Services; transfer of programs and services under certain statutes from Office of Family and Children's Services to Department of Child Protection Services; employment of Coordinator of Services for Victims of Human Trafficking and Commercial Sexual Exploitation; duties; standard operating procedures for investigation, custody and services provided alleged victims of human trafficking and commercial sexual exploitation.

(1) There is hereby created a Mississippi Department of Child Protection Services.

(2) The Chief Administrative Officer of the Department of Child Protection Services shall be the Commissioner of Child Protection Services who shall be appointed by the Governor with the advice and consent of the Senate. The commissioner shall possess the following qualifications:

(a) A bachelor's degree from an accredited institution of higher learning and ten (10) years' experience in management, public administration, finance or accounting; or

(b) A master's or doctoral degree from an accredited institution of higher learning and five (5) years' experience in management, public administration, finance, law or accounting.

(3) The Department of Child Protection Services shall be a subagency independent of, though housed within, the Mississippi Department of Human Services. The Commissioner of the Department of Child Protection Services shall maintain complete and exclusive operational control of the Department of Child Protection Services' functions, except functions shared with the Department of Human Services as provided in subsection (5)(c) and (d) of this section.

(4) The Commissioner of Child Protection Services may assign to the appropriate offices such powers and duties deemed appropriate to carry out the lawful functions of the programs transferred to the department under Chapter 494, Laws of 2016.

(5) The Commissioner of Child Protection Services and the Executive Director of the Department of Human Services shall develop and implement a plan for the orderly establishment of the Department of Child Protection Services and its transition from the Office of Family and Children's Services of the Department of Human Services. The plan shall:

(a) Describe a mechanism for the transfer of any equipment, supplies, records, furnishings or other materials, resources or funds dedicated to the operation of the Office of Family and Children's Services of the Department of Human Services, which may be useful to the Department of Child Protection Services;

(b) Determine the allocation of resources between the newly created Department of Child Protection Services and the Department of Human Services, as practicable;

(c) Determine the allocation of functions where the performance of services may be shared between the Department of Child Protection Services and other employees of the Department of Human Services, as practicable;

(d) Determine whether any administrative support services, such as Information Technology Services, bookkeeping and payroll, can continue to be provided by the Department of Human Services; and

(e) Identify other areas deemed relevant by the commissioner and make recommendations thereon to achieve an orderly transition.

(6) The programs and services provided by the Office of Family and Children's Services of the Department of Human Services under the following statutes shall be provided by the Department of Child Protection Services: Sections 41-87-5, 41-111-1, 43-1-2, 43-1-51, 43-1-55, 43-1-57, 43-1-63, 43-15-3,

43-15-5, 43-15-6, 43-15-13, 43-15-15, 43-15-17, 43-15-19, 43-15-21, 43-15-23, 43-15-51, 43-15-103, 43-15-105, 43-15-115, 43-15-125, 43-15-201, 43-15-203, 43-15-207 and 43-18-3, Mississippi Code of 1972.

(7) The Mississippi Department of Child Protection Services shall submit a copy of the federal Annual Progress and Services Report (APSR) to the Chair of the Senate Public Health and Welfare Committee, the Chair of the Senate Appropriations Committee, the Chair of the House Public Health and Human Services Committee, the Chair of the House Appropriations Committee, the Lieutenant Governor, the Speaker of the House of Representatives, and the Governor by December 1 of each year.

(8)(a) The Commissioner of Child Protection Services shall hire a Coordinator of Services for Victims of Human Trafficking and Commercial Sexual Exploitation within the Department of Child Protection Services whose duties shall include, but not be limited to, the following:

(i) To form specialized human trafficking and commercial sexual exploitation assessment teams to respond on an as-needed basis to act as an emergency, separate and specialized response and assessment team to rapidly respond to the needs of children who are victims of human trafficking and commercial sexual exploitation;

(ii) To identify victims of human trafficking and commercial sexual exploitation;

(iii) To monitor, record and distribute federal human trafficking funds received by the Department of Child Protection Services;

(iv) To employ staff to investigate allegations of human trafficking and commercial sexual exploitation; and

(v) To develop and coordinate services within the Department of Child Protection Services and with outside service providers for victims of human trafficking and commercial sexual exploitation.

(b) The Commissioner of Child Protection Services shall develop standard operating procedures for the investigation, custody and services provided to alleged victims of human trafficking and commercial sexual exploitation.

(c) The Commissioner shall require two (2) hours of training regarding the subject of identifying, assessing, and providing comprehensive services to a child who has experienced or is alleged to have experienced commercial sexual exploitation or human trafficking. The training must be incorporated into the pre-service training requirements of all Mississippi Department of Child Protection Services family specialists, adoption specialists, licensure specialists, direct supervisors of family protection specialists, direct supervisors of adoption specialists, and direct supervisors of licensure specialists.

**HISTORY: Laws, 2016, ch. 494, § 1, eff from and after passage (approved May 13, 2016); Laws, 2018, ch. 460, § 1, eff from and after passage (approved April 13, 2018); Laws, 2020, ch. 493, § 6, eff from and after passage (approved July 9, 2020).**

**Editor's Notes —** Laws of 2016, ch. 494, § 8 provides:

"SECTION 8. Section 1 of this act [codified as this section] shall take effect and be in force from and after its passage [May 13, 2016], and Sections 2 through 7 of this act [amending Sections 43-15-111, 25-3-39, 25-9-120, 25-9-127, 25-53-1, and 25-53-5, respectively] shall take effect and be in force from and after July 1, 2016."

**Amendment Notes —** The 2018 amendment, effective April 13, 2018, rewrote (3), which read: "On a temporary basis, but for no longer than March 1, 2017, the Department of Child Protection Services may function as a Division of the Department of Human Services"; deleted the former last sentence in (4), which read: "The commissioner is authorized to employ three (3) administrators who shall serve at his will and pleasure to direct the bureaus and offices necessary to carry out the lawful functions of the programs transferred to the department"; deleted the former second paragraph of (5)(e); deleted the former first two sentences of (6), which read: "The new Mississippi Department of Child Protection Services is authorized to carry out the duties and responsibilities of the Office of Family and Children's Services of the Department of Human Services during the transition period from and after May 13, 2016, through July 1, 2018. The Office of Family and Children's Services of the Department of Human Services is directed to cooperate with the new department in transferring resources and employees in furtherance of Chapter 494, Laws of 2016" and deleted "From and after July 1, 2018" from the beginning of the former third (now first) sentence; added (7); and made minor grammatical changes.

The 2020 amendment, effective July 9, 2020, rewrote (7), which required the PEER Committee to annually review Mississippi Department of Child Protection Services programs and included the requisite contents of the reviews; and added (8).

## § 43-26-3. Procedures when responding to allegation of child abuse, or human trafficking or commercial sexual exploitation of a child; presumption that minor taken into custody under Section 97-29-49 is victim of human trafficking and commercial sexual exploitation.

(1) The Department of Child Protection Services shall immediately send the on-call caseworker to the scene or location chosen by law enforcement (a) when the department is contacted by a law enforcement officer who encounters a minor whom the officer reasonably suspects of being a victim of human trafficking or commercial sexual exploitation, and (b) the officer requests such assistance using the Mississippi Child Protection Services hotline.

(2) The Department of Child Protection Services, in addition to its duties provided in Section 43-21-353, within twenty-four (24) hours of receiving a report of child abuse, human trafficking of a child or commercial sexual exploitation of a child, sending an on-call caseworker to a location in response to a minor who is reasonably suspected of being a victim of human trafficking or commercial sexual exploitation at the request of a law enforcement officer, or when a Child Protection Services caseworker encounters a minor who is reasonably suspected of being a victim of human trafficking or commercial sexual exploitation, shall:

(a) Make in-person contact with the child to determine appropriate next steps for the protection of the child, or where in-person contact cannot be made within twenty-four (24) hours of receiving the report, shall immediately notify the Coordinator of Services for Victims of Human Trafficking and Commercial Sexual Exploitation within the Department of Child Protection

Services and law enforcement, and shall document all steps taken to make contact with the child as well as the steps that will be taken to locate and ascertain the safety of the child;

(b) Attempt to have an on-site interview with the child's caretaker;

(c) Attempt to have law enforcement or an appropriate investigator conduct an on-site interview with the child's suspected offender; and

(d) Document and assess the safety of other children in the care or custody of the caretaker and/or who may be at risk of abuse by the suspected offender.

(2) If the child is suspected to be a victim of human trafficking or commercial sexual exploitation, the Coordinator of Services for Victims of Human Trafficking and Commercial Sexual Exploitation within the Department of Child Protection Services shall activate an emergency, separate and specialized human trafficking and commercial sexual exploitation assessment team. The team shall include, at a minimum: (a) an investigator certified by the Mississippi Human Trafficking Operational Task Force Board, (b) an investigator from the Department of Child Protection Services, and (c) a person certified by the office of the Attorney General as an advocate for victims of human trafficking and commercial sexual exploitation. Such emergency assessment team shall be created without authorization of the youth court, or designated by the Office of the Attorney General as an advocate for such victims.

(3) Any person under eighteen (18) years of age taken into custody under the provisions of Section 97-29-49 shall be presumed a victim of human trafficking and commercial sexual exploitation.

**HISTORY: Laws, 2020, ch. 493, § 7, eff from and after passage (approved July 9, 2020).**

# CHAPTER 27.

# DEPARTMENT OF YOUTH SERVICES

In General. .......... 43-27-1
Services and Care for Certain Children and Youth in Custody of or Under the Supervision of the Department of Human Services. ..... 43-27-101
Improvements to Juvenile Correctional Facilities. .......... 43-27-201

## IN GENERAL

Sec.

| | |
|---|---|
| 43-27-20. | Division of Community Services; Director [Repealed effective July 1, 2023]. |
| 43-27-29. | Academic and vocational training. |
| 43-27-39. | Use of Columbia Training School as secure training school for juvenile delinquents to be discontinued; all youth adjudicated to training school to be housed at Oakley Training School. |

## § 43-27-20. Division of Community Services; Director [Repealed effective July 1, 2023].

(a) Within the Department of Youth Services there shall be a Division of Community Services which shall be headed by a director appointed by and responsible to the Director of the Department of Youth Services. He shall hold a master's degree in social work or a related field and shall have no less than three (3) years' experience in social services, or in lieu of such degree and experience, he shall have a minimum of eight (8) years' experience in social work or a related field. He shall employ and assign the community workers to serve in the various areas in the state and any other supporting personnel necessary to carry out the duties of the Division of Community Services.

(b) The Director of the Division of Community Services shall assign probation and aftercare workers to the youth court or family court judges of the various court districts upon the request of the individual judge on the basis of caseload and need, when funds are available. The probation and aftercare workers shall live in their respective districts except upon approval of the Director of the Division of Community Services. The Director of the Division of Community Services is authorized to assign a youth services counselor to a district other than the district in which the youth services counselor lives upon the approval of the youth court judge of the assigned district and the Director of the Division of Youth Services. Every placement shall be with the approval of the youth court or the family court judge, and a probation and aftercare worker may be removed for cause from a youth or family court district.

(c) Any counties or cities which, on July 1, 1973, have court counselors or similar personnel may continue using this personnel or may choose to come within the statewide framework.

(d) A probation and aftercare worker may be transferred by the division from one (1) court to another after consultation with the judge or judges in the court to which the employee is currently assigned.

(e) The Division of Community Services shall have such duties as the Department of Youth Services shall assign to it which shall include, but not be limited to, the following:

(1) Preparing the social, educational and home-life history and other diagnostic reports on the child for the benefit of the court or the training school; however, this provision shall not abridge the power of the court to require similar services from other agencies, according to law.

(2) Serving in counseling capacities with the youth or family courts.

(3) Serving as probation agents for the youth or family courts.

(4) Serving, advising and counseling of children in the various institutions under the control of the Division of Juvenile Institutions as may be necessary to the placement of the children in proper environment after release and the placement of children in suitable jobs where necessary and proper.

(5) Supervising and guiding of children released or conditionally released from institutions under the control of the Division of Juvenile Institutions.

(6) Counseling in an aftercare program.

(7) Coordinating the activities of supporting community agencies which aid in the social adjustment of children released from the institution and in an aftercare program.

(8) Providing or arranging for necessary services leading to the rehabilitation of delinquents, either within the division or through cooperative arrangements with other appropriate agencies.

(9) Providing counseling and supervision for any child under ten (10) years of age who has been brought to the attention of the court when other suitable personnel is not available and upon request of the court concerned.

(10) Supervising the aftercare program and making revocation investigations at the request of the court.

(11) Implement a Standardized Risk Assessment Tool for use in the community.

(12) Develop a graduated sanctions policy for use within the community.

(f) This section shall stand repealed on July 1, 2023.

**HISTORY: Laws, 1973, ch. 438, § 10; Laws, 1998, ch. 552, § 1; Laws, 2000, ch. 351, § 1; Laws, 2003, ch. 494, § 1; Laws, 2009, ch. 396, § 1; Laws, 2012, ch. 470, § 5; Laws, 2015, ch. 403, § 6, eff from and after July 1, 2015; Laws, 2019, ch. 372, § 5, eff from and after July 1, 2019.**

**Amendment Notes —** The 2019 amendment extended the date of the repealer for the section by substituting “July 1, 2023” for “July 1, 2019” in (f).

## § 43-27-29. Academic and vocational training.

Academic and vocational training at all institutions under the department of youth services shall meet standards prescribed by the state department of education based upon standards required for public schools. The department may prescribe such additional requirements as it may from time to time deem necessary. The state superintendent of education will administer the standards related to the high school and elementary school programs. Reports from the state department of education evaluating the educational program at all juvenile correctional institutions and indicating whether or not the program meets the standards as prescribed shall be made directly to the director of the division of juvenile correctional institutions at regularly scheduled meetings. Such state department of education supervisory personnel as deemed appropriate shall be utilized for evaluating the programs and for reporting to the director of said division.

**HISTORY: Laws, 1973, ch. 438, § 14, eff from and after July 1, 1973.**

## § 43-27-39. Use of Columbia Training School as secure training school for juvenile delinquents to be discontinued; all youth adjudicated to training school to be housed at Oakley Training School.

(1) The purpose of this section is to ensure that Mississippi’s juvenile

justice system is cost-efficient and effective at reducing juvenile crime and to create a continuum of options for Mississippi's youth court judges so that they are better equipped to protect our communities and to care for our children.

(2) The Columbia Training School shall no longer operate as a secure training school for juvenile delinquents. All youth, both male and female, committed to the custody of the Department of Human Services and adjudicated to training school shall be housed at the Oakley Youth Development Center. The Oakley Youth Development Center shall provide gender-specific treatment for youth who are adjudicated delinquent.

(3) Any portion of Columbia Training School property and facilities described in Section 1 of Chapter 553, Laws of 2012, may be conveyed or transferred to the Board of Supervisors of Marion County, Mississippi.

(4) Any portion of Columbia Training School property and facilities described in Section 2 of Chapter 386, Laws of 2017, may be conveyed or transferred to the Marion County Economic Development District for the purposes prescribed under that section.

**HISTORY: Laws, 2008, ch. 555, § 1; Laws, 2010, ch. 526, § 2; Laws, 2010, ch. 554, § 7; Laws, 2012, ch. 553, § 2, eff from and after passage (approved May 22, 2012.); Laws, 2019, ch. 363, § 3, eff from and after July 1, 2019.**

**Editor's Notes —** Laws of 2017, ch. 386, § 1, as amended by Laws of 2018, ch. 449, § 3, and as amended by Laws of 2019, ch. 363, § 1, provides in part:

"(1) The Department of Finance and Administration may transfer and convey to the Columbia-Marion County Airport Authority certain real property located at Columbia Training School in Marion County, Mississippi. The real property contains approximately two hundred four (204) acres, more or less, lying North of Highway 44 and is more particularly described as follows:

[For complete property description, see Laws of 2017, ch. 386, § 1, as amended by Section 3 of Chapter 449, Laws of 2018.]

"(2)(a) The Department of Finance and Administration may transfer and convey to the Marion County Economic Development District certain real property located at Columbia Training School in Marion County, Mississippi. The real property contains approximately four hundred six (406) acres, more or less, lying North of Highway 44 and is more particularly described as follows:

[For complete property description, see Laws of 2017, ch. 386, § 1, as amended by Section 3 of Chapter 449, Laws of 2018.]

"(b)(i) The Marion County Economic Development District is authorized to transfer and convey without cost a certain portion of the real property described in paragraph (a) of this subsection (2) located at Columbia Training School in Marion County, Mississippi, to the Board of Supervisors of Marion County for the purpose of law enforcement training. The real property contains approximately eighteen (18) acres, more or less, and is more particularly described as follows:

[For complete property description, see Section 1 of Chapter 386, Laws of 2017, as amended by Section 3 of Chapter 449, Laws of 2018, and as amended by Section 1 of Chapter 363, Laws of 2019.]

"(ii) The property transaction authorized in subparagraph (i) of this paragraph (b) shall not be subject to the monetary consideration requirements set forth in Section 19-5-99(5)(a). Additionally, the property transferred and conveyed under subparagraph (i) of this paragraph (b) shall not be subject to the use restrictions set forth in Section 19-5-99(5)(a) and in subsection (3) of this section.

"(3) The aggregate of parcels described in subsections (1) and (2) of this section consists of six hundred ten (610) acres, more or less, of the Columbia Training School Property, which the entirety of such section whereon the named property is situated consists of one thousand eight hundred twenty-three (1,823) acres, more or less. Except as otherwise provided in subsection (2)(b) of this section, the remaining property transferred and conveyed under subsections (1) and (2) of this section shall only be used to make improvements to the Marion County Airport and to construct an adjacent industrial park or other aviation-related facility.

"(4) The State of Mississippi shall retain any mineral rights to the property transferred and conveyed under subsections (1) and (2) of this section. The Department of Finance and Administration shall have the authority to correct any discrepancies in the property descriptions provided in subsections (1) and (2) of this section.

"(5)(a) The parcels of property conveyed under this section must be conveyed to the Columbia-Marion County Airport Authority and to the Marion County Economic Development District without any assumption of liability or financial responsibility by the State of Mississippi for any known or unknown environmental defects contained thereon. Upon receipt of the deed of title to the property, the respective recipients, in their individual capacities, shall indemnify the State of Mississippi for any damage, injury or loss.

"(b) The Columbia-Marion County Airport Authority and the Marion County Economic Development District shall provide the Mississippi Department of Human Services six (6) months to harvest and sell any timber located on the property transferred using a company of the department's preference prior to any improvement or development being made on the property by such entities, the revenue generated from which shall be deposited into the State Treasury and earmarked for use by the Department of Human Services for all administrative and program purposes deemed necessary by the executive director. Upon harvesting the timber upon the property within the time specified in this paragraph, the department shall forfeit all future rights to any timber remaining on or regrown on the property, as well as any right of easement for accessing the land.

"(6) The Columbia-Marion County Airport Authority and the Marion County Economic Development District shall each grant the Department of Human Services an easement of ingress and egress to access the remaining parcels of property retained by the Department of Human Services if reasonable access to such remaining parcels is not otherwise available."

Laws of 2019, ch. 363, § 2 amended Laws of 2017, ch. 386, as amended by Laws of 2018, ch. 449, § 3, to add a new Section 2, which reads:

"Section 2. (1) Department of Finance and Administration, acting on behalf of the Mississippi Department of Human Services, is authorized to transfer and convey to the Marion County Economic Development District certain real property located at Columbia Training School in Marion County, Mississippi, for the purpose of providing unobstructed access for the industrial development of the Marion County AirPlex on the property transferred under subsection (2)(a) of Section 1 of this chapter. The real property contains approximately forty (40) acres, more or less, and is more particularly described as follows:

[For complete property description, see Section 2 of Chapter 363, Laws of 2019, which amends Laws of 2017, ch. 386, as amended by Laws of 2018, ch. 449, § 3, to add a new Section 2.]

"(2) The State of Mississippi shall retain any mineral rights to the property transferred and conveyed under subsection (1) of this section. The Department of Finance and Administration shall have the authority to correct any discrepancies in the property descriptions provided in subsection (1) of this section.

"(3) The parcels of property conveyed under this section must be conveyed to the Marion County Economic Development District without any assumption of liability or financial responsibility by the State of Mississippi for any known or unknown environmental defects contained thereon. Upon receipt of the deed of title to the property, the Marion County Economic Development District shall indemnify the State of Mississippi for any damage, injury or loss.

**Amendment Notes** — The 2019 amendment added (4).

## SERVICES AND CARE FOR CERTAIN CHILDREN AND YOUTH IN CUSTODY OF OR UNDER THE SUPERVISION OF THE DEPARTMENT OF HUMAN SERVICES

### § 43-27-107. Repealed.

Repealed by § 43-1-55(6), effective July 1, 2019, and by its own terms, effective July 1, 2019.

§ 43-27-107. [Laws, 1994, ch. 649, § 20; Laws, 1998, ch. 330, § 1; Laws, 2000, ch. 301, § 14; Laws, 2000, ch. 565, § 1; Laws, 2006, ch. 600, § 7; Laws, 2009, ch. 364, § 2; Laws, 2010, ch. 461, § 2; Laws, 2012, ch. 470, § 7; Laws, 2015, ch. 403, § 7, eff from and after July 1, 2015.]

**Editor's Notes** — Former § 43-27-107 authorized the Department of Human Services to set the qualifications necessary for all family protection specialists employed by the department and provided the requisite qualifications.

## IMPROVEMENTS TO JUVENILE CORRECTIONAL FACILITIES

Sec.
43-27-203. Youth Challenge Program; implementation and administration of program by National Guard; issuance of diplomas to participants meeting High School Equivalency Diploma requirements.
43-27-207. Department of Finance and Administration to issue general obligation bonds to provide funds for construction, renovation, repairing, remodeling, equipping, furnishing, adding to or improving juvenile detention facilities; 1994 State Juvenile Detention Facility Construction, Repair and Renovation Fund.

### § 43-27-203. Youth Challenge Program; implementation and administration of program by National Guard; issuance of diplomas to participants meeting High School Equivalency Diploma requirements.

(1) There is created under the Mississippi National Guard a program to be known as the "Youth Challenge Program." The program shall be an interdiction program designed for children determined to be "at risk" by the National Guard.

(2) The Mississippi National Guard shall implement and administer the Youth Challenge Program and shall promulgate rules and regulations concerning the administration of the program. The National Guard shall prepare written guidelines concerning the nomination and selection process of participants in the program, and such guidelines shall include a list of the factors considered in the selection process.

(3) Participation in the Youth Challenge Program shall be on a voluntary basis. No child may be sentenced by any court to participate in the program; however, a youth court judge may refer the program to a child when, under his determination, such program would be sufficient to meet the needs of the child.

(4) The Mississippi National Guard, under the auspices of the Challenge Academy, may award an adult high school diploma to each participant who meets the requirements for a High School Equivalency Diploma equivalent under the policies and guidelines of the GED Testing Service of the American Council on Education or other high school equivalency exam and any other minimum academic requirements prescribed by the National Guard and Challenge Academy for graduation from the Youth Challenge Program. Participants in the program who do not meet the minimum academic requirements may be awarded a special certificate of attendance. The Mississippi National Guard and the Challenge Academy shall establish rules and regulations for awarding the adult high school diploma and shall prescribe the form for such diploma and the certificate of attendance.

(5) The Mississippi National Guard may accept any available funds that may be used to defray the expenses of the program, including, but not limited to, federal funding, public or private funds and any funds that may be appropriated by the Legislature for that purpose.

**HISTORY: Laws, 1994, ch. 652, § 2; Laws, 1999, ch. 353, § 1; Laws, 2014, ch. 398, § 13; Laws, 2016, ch. 351, § 1, eff from and after passage (approved Apr. 5, 2016).**

**Amendment Notes** — The 2016 amendment inserted "or other high school equivalency exam" in the first sentence of (4).

## § 43-27-207. Department of Finance and Administration to issue general obligation bonds to provide funds for construction, renovation, repairing, remodeling, equipping, furnishing, adding to or improving juvenile detention facilities; 1994 State Juvenile Detention Facility Construction, Repair and Renovation Fund.

(1) The Department of Finance and Administration, at one (1) time or from time to time, may declare by resolution the necessity for issuance of general obligation bonds of the State of Mississippi to provide funds for construction, repairing, remodeling, equipping, furnishing, adding to, improving and maintaining juvenile detention facilities which shall include temporary and permanent facilities for housing juvenile offenders, a wilderness camp or any other facility used for juvenile detention. Upon the adoption of a resolution by the Department of Finance and Administration, declaring the necessity for the issuance of any part or all of the general obligation bonds authorized by this section, the department shall deliver a certified copy of its resolution or resolutions to the State Bond Commission. Upon receipt of such

resolution, the State Bond Commission, in its discretion, may act as the issuing agent, prescribe the form of the bonds, advertise for and accept bids, issue and sell the bonds so authorized to be sold, and do any and all other things necessary and advisable in connection with the issuance and sale of such bonds. The amount of bonds issued under Sections 43-27-201 through 43-27-233 shall not exceed Twenty-one Million One Hundred Fifty Thousand Dollars ($21,150,000.00) to provide funds for the purposes hereinabove set forth and to issue and sell bonds in the amount specified.

(2) Out of the total amount of bonds authorized to be issued, funds shall be allocated, except as otherwise provided in subsections (3) and (4), as follows:

(a) LOCAL JUVENILE DETENTION FACILITY CONSTRUCTION, RENOVATION AND REPAIR

Construction, repair, remodeling, equipping, furnishing, adding to, improving and maintaining juvenile detention facilities ..... $ 3,650,000.00

(b) OAKLEY AND COLUMBIA TRAINING SCHOOLS

Construction of a one-hundred-fifty-bed, stand alone, medium security juvenile correctional facility for habitual violent male offenders, construction of a one-hundred-bed minimum security juvenile facility for female offenders, an additional, stand alone, fifteen-bed maximum security juvenile correctional facility for female offenders, construction of staff housing facilities, treatment facilities and any other facilities and related construction deemed appropriate by the Bureau of Building, Grounds and Real Property Management ........................................... $15,500,000.00

(c) OAKLEY AND COLUMBIA TRAINING SCHOOLS

Renovation and repair of infrastructure and facilities, including replacement or repair of furnishings and equipment ................. $ 2,000,000.00

TOTAL.................................................... $21,150,000.00

(3) It is expressly provided, however, that if any funds of the Fifteen Million Five Hundred Thousand Dollars ($15,500,000.00) provided for Oakley and Columbia Training Schools in subsection (2)(b) of this section remain after the completion of such project, such remaining funds shall be used for renovation and repair at Oakley and Columbia Training Schools in addition to the funds provided in subsection (2)(c) of this section.

(4) A special fund, to be designated the "1994 State Juvenile Detention Facility Construction, Repair and Renovation Fund," is created within the State Treasury. The fund shall be maintained by the State Treasurer as a separate and special fund, separate and apart from the General Fund of the state, and investment earnings on amounts in the fund shall be deposited into such fund. The expenditure of monies deposited into the fund shall be under the direction of the Department of Finance and Administration, and such funds shall be paid by the State Treasurer upon warrants issued by the Department of Finance and Administration. Monies deposited into such fund shall be allocated and disbursed according to subsection (2)(b) and (c) of this section.

**HISTORY: Laws, 1994, ch. 652, § 4; Laws, 1997, ch. 494, § 1; Laws, 1999, ch. 522, § 91, eff from and after passage (approved Apr. 15, 1999).**

**Editor's Notes** — This section has been set out to correct a typographical error in the 2015 Replacement Volume 11A by substituting "subsection (2)(b) and (c) of this section" for "subsections (2)(b) and (c) of this section" at the end of subsection (4).

# CHAPTER 28.

# MISSISSIPPI ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACT

Sec.

43-28-1. Short title.
43-28-3. Legislative intent.
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43-28-9. Powers of board.
43-28-11. ABLE Trust Fund created; Trust Fund accounts.
43-28-13. ABLE Trust Fund property and income exempt from state taxation; deduction of contributions to ABLE Program accounts from taxable income; amounts in ABLE account not considered in determining eligibility for certain public assistance.
43-28-15. Authority of Board to establish a comprehensive investment plan.
43-28-17. Administration of Mississippi ABLE Program; provisions of program account participation agreement; termination of program.
43-28-19. Annual statements and reports.
43-28-21. Mississippi ABLE Program monies paid into or expended out of the trust fund on behalf of a beneficiary are exempt from creditor claims; prohibition against use as loan collateral.
43-28-23. Distribution requirements.
43-28-25. Certain state agencies required to assist board.
43-28-27. Severability.

## § 43-28-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Achieving a Better Life Experience (ABLE) Act."

**HISTORY: Laws, 2017, ch. 350, § 1, eff from and after passage (approved Mar. 20, 2017).**

**Comparable Laws from other States** — Arizona: A.R.S. § 46-901 et seq.
Arkansas: A.C.A. § 20-3-105 et seq.
California: Cal Wel & Inst Code § 4875 et seq.
Connecticut: Conn. Gen. Stat. § 3-39j et seq.
Delaware: 16 Del. C. § 9601A et seq.
Georgia: O.C.G.A. § 30-9-1 et seq.
Indiana: Burns Ind. Code Ann. § 12-11-14-1 et seq.
Michigan: MCLS § 206.981 et seq.
Missouri: § 209.600 R.S.Mo. et seq.
Montana: 53-25-101, MCA et seq.
Nebraska: R.R.S. Neb. § 77-1401 et seq.
New York: NY CLS Men Hyg § 84.01 et seq.
North Carolina: N.C. Gen. Stat. § 147-86.70 et seq.
Rhode Island: R.I. Gen. Laws § 42-7.2-20.1 et seq.
Tennessee: Tenn. Code Ann. § 71-4-801 et seq.

Texas: Tex. Educ. Code § 54.901 et seq.
Utah Code Ann. § 35A-12-102 et seq.
Vermont: 33 V.S.A. § 8001 et seq.
Washington: Rev. Code Wash. (ARCW) §§ 43.330.460 to 43.330.666 and § 43.330.668.

## § 43-28-3. Legislative intent.

It is the intent of the Legislature to establish a qualified Achieving a Better Life Experience (ABLE) Program in this state which will encourage and assist the saving of private funds in tax-exempt accounts in order to pay for the qualified disability expenses of eligible individuals with disabilities. The Legislature intends that the qualified ABLE Program be implemented in a manner that is consistent with federal law authorizing the program and that maximizes program efficiency and effectiveness.

**HISTORY: Laws, 2017, ch. 350, § 2, eff from and after passage (approved Mar. 20, 2017).**

## § 43-28-5. Definitions.

As used in this chapter the following words and phrases have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Mississippi ABLE account" means an account established and maintained under the Mississippi ABLE Program or entered into through a participation agreement with another state that has contracted with the Mississippi ABLE Board, or a consortium of states that have agreed to provide ABLE accounts to the residents of participating states.

(b) "Board" or "board of directors" means the Mississippi ABLE Board of Directors.

(c) "Contracting state" or "consortium" means a state or group of states that have entered into a contract with the Mississippi ABLE Board or a multistate Compact with the ABLE Boards of several states to provide residents of Mississippi or, in the case of a consortium, residents of participating states with access to a qualified ABLE Program.

(d) "Designated beneficiary" means the eligible individual who established an ABLE account or the eligible individual to whom an ABLE account was transferred.

(e) "Eligible individual" has the same meaning as provided in Section 529A of the Internal Revenue Code.

(f) "Mississippi ABLE Program" means the qualified ABLE Program established and maintained under this section by the Mississippi ABLE Board, and administered through the Mississippi Department of Rehabilitation Services.

(g) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended, and regulations adopted pursuant thereto.

(h) "Participation agreement" means the agreement between the Mississippi ABLE Board, and a participant in the Mississippi ABLE Program.

(i) "Qualified ABLE Program" means the program authorized under Section 529A of the Internal Revenue Code which may be established by a state or agency, or instrumentality thereof, to allow a person to make contributions for a taxable year to an ABLE account established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the ABLE account.

(j) "Qualified disability expense" has the same meaning as provided in Section 529A of the Internal Revenue Code.

(k) "Section 529A of the Internal Revenue Code" or "Section 529A" means 26 USCS Section 529A.

**HISTORY: Laws, 2017, ch. 350, § 3, eff from and after passage (approved Mar. 20, 2017).**

## § 43-28-7. Mississippi ABLE Board of Directors created; membership.

(1) There is created the Mississippi ABLE Board of Directors which shall consist of nine (9) members as follows:

(a) The State Treasurer, or his or her designee;

(b) The Executive Director of the Department of Rehabilitation Services, or his or her designee;

(c) The Executive Director of the Department of Mental Health, or his or her designee;

(d) Three (3) members of the public who, by reason of his or her education and experience relating to disabilities or financial planning, is qualified to serve, to be appointed by the Governor one (1) of whom shall be appointed from each Supreme Court District;

(e) The Executive Director, or his or her designee, of an advocacy organization for citizens of all ages with cognitive, intellectual and developmental disabilities and their families, to be appointed by the Governor;

(f) The Executive Director, or his or her designee, of an advocacy organization for citizens of all ages with cross disabilities and their families, to be appointed by the Governor; and

(g) The Executive Director, or his or her designee, of an advocacy organization for citizens with mental health disabilities, to be appointed by the Governor.

(2)(a) Of the six (6) appointed members by the Governor: One (1) member shall be appointed for an initial term of one (1) year; one (1) member shall be appointed for an initial term of two (2) years; one (1) member shall be appointed for an initial term of three (3) years; one (1) member shall be appointed for an initial term of four (4) years; one (1) member shall be appointed for an initial term of five (5) years; and one (1) member shall be appointed for an initial term of six (6) years. On the expiration of any of the terms of office, successor appointees shall be appointed for terms of five (5) years in each case. Ex officio members of the board may be represented at official meetings by their deputy, or other designee, and such designees shall have full voting privileges and shall be included in the determination of a quorum for conducting board business.

(b) Initial members of the board shall be appointed within thirty (30) days after March 20, 2017, and shall meet at the state office of the Department of Rehabilitation Services, at a date to be fixed by the Executive Director of the Department of Rehabilitation Services, not later than thirty (30) days after all appointments have been made, to organize and select a chairman and vice chairman, and develop an implementation plan for the Mississippi ABLE Program, which shall be completed on or before October 1, 2017. The chairman shall preside over all meetings.

(3) Successors to the appointed members shall serve for the length of the term for each appointing official and shall be eligible for reappointment, and shall serve until a successor is appointed and qualified. Any person appointed to fill a vacancy on the board shall be appointed in a like manner and shall serve for only the unexpired term.

(4) Members of the board of directors shall serve without compensation, but shall be reimbursed for each day's official duties of the board at the same per diem as established by Section 25-3-69, and actual travel and lodging expenses as established by Section 25-3-41.

(5) The board of directors shall annually elect one (1) member to serve as chairman of the board and one (1) member to serve as vice chairman. The vice chairman shall act as chairman in the absence of, or upon the disability of the chairman, or in the event of a vacancy of the office of chairman.

(6) A majority of the currently serving members of the board shall constitute a quorum for the purposes of conducting business and exercising its official powers and duties. Any action taken by the board shall be upon the vote of a majority of the members present.

**HISTORY: Laws, 2017, ch. 350, § 4, eff from and after passage (approved Mar. 20, 2017).**

## § 43-28-9. Powers of board.

In addition to those powers granted to the board by any other provisions of this chapter, the Mississippi ABLE Board shall have the powers necessary to carry out the purposes and provisions of this chapter, the purposes and objectives of ABLE accounts, and the powers delegated by any other law or executive order of this state, including, but not limited to, the following express powers:

(a) To adopt such rules and regulations as are necessary to implement this chapter, subject to applicable federal laws and regulations, including rules regarding transfers of funds between ABLE accounts established under the provisions of this chapter and independent personal bank accounts;

(b) To impose reasonable requirements for beneficiaries or account owners at the time of enrollment in the Mississippi ABLE Program;

(c) To consult with the Executive Director of the Department of Rehabilitation Services and the State Treasurer for the department's employment of a Mississippi ABLE Coordinator, who shall:

(i) Coordinate meetings of the board and keep minutes of its actions;

(ii) Remain informed of developments in federal rules and regulations affecting ABLE accounts and ensure that the Mississippi ABLE Program remains in compliance;

(iii) Be authorized to enter into contracts, on behalf of the Mississippi ABLE Board, with records administrators, program managers, consultants and other qualified persons and entities for administrative and technical assistance in carrying out the responsibilities of the Mississippi ABLE Program; and

(iv) Perform such other duties as the board may prescribe;

(d) To contract for necessary goods and services, to employ necessary personnel, and to engage the services of consultants and other qualified persons and entities for administrative and technical assistance in carrying out the responsibilities of the ABLE account funds under terms and conditions that the board deems reasonable, including contract terms for such consideration, and for such purposes as the board deems advisable;

(e) To solicit and accept gifts, including bequests or other testamentary gifts made by will, trust or other disposition grants, loans and other aids from any personal source or to participate in any other way in any federal, state or local governmental programs in carrying out the purposes of this chapter;

(f) To define the terms and conditions under which payments may be withdrawn for qualifying expenses established under this chapter and to impose reasonable transaction fees;

(g) To serve as an information clearinghouse for the gathering, compilation and dissemination of educational and programmatic materials relating to the design, operation and benefits provided through ABLE accounts and access to entry into the program;

(h) To regulate the receipt of contributions or payments to the ABLE Trust Fund;

(i) To segregate contributions and payments to the ABLE Trust Fund into various accounts and funds;

(j) To require and collect administrative fees and charges in connection with any transaction and to impose reasonable penalties for withdrawal of funds for nonqualified expenses or for entering into a ABLE account agreement on a fraudulent basis;

(k) To procure insurance against any loss in connection with the property, assets and activities of the ABLE Trust Fund or the board;

(*l*) To require that account owners of ABLE account agreements verify, under sworn attestation, any requests for contract conversions, substitutions, transfers, cancellations, refund requests or contract changes of any nature;

(m) To solicit proposals and to contract for the marketing of the Mississippi ABLE Program, provided that: (i) any materials produced by a marketing contractor for the purpose of marketing the program must be approved by the board before being made available to the public; and (ii) neither the state nor the board shall be liable for misrepresentation of the program by a marketing contractor;

(n) To delegate responsibility for administration of the comprehensive investment plan to a contractor or contractors or a consultant or consultants that the board determines is qualified;

(o) To make all necessary and appropriate arrangements with vendors, health care service providers, rehabilitation specialists or other entities in order to fulfill its obligations under ABLE account agreements;

(p) To establish other policies, procedures and criteria necessary to implement and administer this chapter;

(q) To authorize the Department of Rehabilitation Services with the advice of the State Treasurer, to carry out any or all of the powers and duties enumerated in this section for efficient and effective administration of the Mississippi ABLE Program and ABLE Trust Fund;

(r) To develop a user-friendly website or access link on the Department of Rehabilitation Services' website to serve as a virtual program and access portal to information about the ABLE Program and how an individual might be able to enroll, whether in the State of Mississippi or in a contracting state with whom Mississippi has entered into a contractual relationship either bilaterally or as part of an ABLE consortium;

(s) To provide an ABLE assistance helpline by which those having inquires can be directed to the proper entity for assistance in qualifying and enrolling in an ABLE Program; and

(t) To develop and provide an "Account Holder's Bill of Rights" to each individual, who is a Mississippi resident, and who enrolls in the ABLE Program whether such account is managed inside or outside of the state.

**HISTORY: Laws, 2017, ch. 350, § 5, eff from and after passage (approved Mar. 20, 2017).**

## § 43-28-11. ABLE Trust Fund created; Trust Fund accounts.

(1) There is created a Mississippi Achieving a Better Life Experience (ABLE) Trust Fund as an instrumentality of the state to be administered by the Department of Rehabilitation Services in consultation with the Treasury Department. The ABLE Trust Fund shall consist of state appropriations, monies acquired from other governmental or private sources and money remitted in accordance with ABLE participation agreements, and shall receive and hold all payments, contributions and deposits intended for it as well as gifts, bequests, endowments or federal, state or local grants and any other public or private source of funds and all earnings on the fund until disbursed as provided under this section. The amounts on deposit in the trust fund shall not constitute property of the state. Amounts on deposit in the trust fund may not be commingled with state funds, and the state may have no claim to or interest in such funds. ABLE participation agreements or any other contract

entered into by or on behalf of the trust do not constitute a debt or obligation of the state, and no account owner is entitled to any amounts except for those amounts on deposit in or accrued to their account.

The ABLE Trust Fund shall continue in existence as long as it holds any funds belonging to an account owner or otherwise has any obligations to any person or entity until its existence is terminated by the Legislature based on the recommendation of the Mississippi ABLE Board, and remaining assets on deposit in the fund are returned to account owners or transferred to the state in accordance with unclaimed property laws.

(2) There are created the following three (3) separate accounts within the ABLE Trust Fund:

(a) The administrative account, which shall accept, deposit and disburse funds for the purpose of administering and marketing the program;

(b) The endowment account, which shall receive and deposit accounts received in connection with the sales of interests in the ABLE Trust Fund other than amounts for the administrative account and other than amounts received pursuant to a participation agreement. Amounts on deposit in the endowment account may be applied as specified by the board for any purpose related to the program; and

(c) The program account, which shall receive, invest and disburse amounts pursuant to participation agreements.

(3) Payments received by the board on behalf of account owners from other payors or any other source, public or private, shall be placed in the ABLE Trust Fund, or in the event ABLE accounts are established in other states pursuant to an agreement entered into with a contracting state or consortium state, and the board shall cause there to be maintained separate records and accounts for individual account owners, as may be required under Section 529A of the Internal Revenue Code of 1986, as amended, and any other applicable federal law.

(4) Account owners and any other payors or contributors shall be permitted only to contribute cash or any other form of payment or contribution as is permitted under Section 529A of the Internal Revenue Code of 1986, as amended, and approved by the board.

(5) The account owner retains ownership of all amounts on deposit in his or her account with the Mississippi ABLE Program up to the date of withdrawal of qualified disability expense transactions. Earnings derived from investment of the contributions shall be considered to be held in trust in the same manner as contributions, except as applied for purposes of maintaining and administrating the program as provided in this chapter. Amounts on deposit in an account owner's account shall be available for expenses and penalties imposed by the board for the program as disclosed in the ABLE participation agreement.

(6) The assets of the ABLE Trust Fund shall be preserved, invested and expended solely pursuant to and for the purposes of this chapter and shall not be loaned or otherwise transferred or used by the state for any other purpose.

**HISTORY: Laws, 2017, ch. 350, § 6, eff from and after passage (approved Mar. 20, 2017).**

**Federal Aspects—** Section 539A of the Internal Revenue Code of 1986, see 26 USCS § 529A.

## § 43-28-13. ABLE Trust Fund property and income exempt from state taxation; deduction of contributions to ABLE Program accounts from taxable income; amounts in ABLE account not considered in determining eligibility for certain public assistance.

(1) All property and income of the ABLE Trust Fund, as an instrumentality of the state, is exempt from all taxation by the state and by its political subdivisions.

(2) Any contributor or payor to a Mississippi ABLE Program account may deduct from their Mississippi taxable income any contributions or payments to an account or accounts in the ABLE Trust Fund up to a maximum annual amount limit established by Congress for such accounts for single, joint and other filers. Contributions or payments for such tax years may be made after such calendar years but before the deadline for making contributions to an individual retirement account under federal law for such years. The earnings portion of any withdrawals from an account that are not qualified withdrawals, as well as any amounts included in such nonqualified withdrawals previously deducted from taxable income under this section, shall be included in the gross income of the recipient of the withdrawal for purposes of the Mississippi Income Tax Law in the year of such withdrawal.

(3) Additionally, the participation of any Mississippi resident in the Mississippi ABLE Program or any other qualified ABLE Program, shall not preclude the resident from receiving any benefit or assistance provided by the State of Mississippi for which they are eligible. Funds in an individual's Mississippi ABLE account or any other ABLE account shall be exempt from any consideration when any agency or subdivision of the state is determining an individual's eligibility for state-provided assistance. Likewise, any tangible assets purchased with Mississippi ABLE account funds or any other ABLE account funds which are not otherwise disqualified as a countable resource of a program participant shall be exempt from consideration when determining such person's eligibility provided by the state, to the extent allowable under federal law.

**HISTORY: Laws, 2017, ch. 350, § 7, eff from and after passage (approved Mar. 20, 2017).**

## § 43-28-15. Authority of Board to establish a comprehensive investment plan.

(1) The board has authority to establish a comprehensive investment plan for the purposes of this chapter, to invest any funds of the ABLE Trust Fund in

any instrument, obligation, security or property that constitutes legal investments for public funds in the state, and to name and use depositories for its investments and holdings. The comprehensive investment plan shall specify the investment policies to be utilized by the board in its administration of the funds. The board may authorize investments in any investment vehicle authorized for the Mississippi Achieving a Better Life Experience Program.

(2) All investments shall be acquired by the board at prices not exceeding the prevailing market values for such securities and shall be marked clearly to indicate ownership by the system and, to the extent possible, shall be registered in the name of the system.

(3) Except as otherwise provided in this section, no trustee or employee of the board may have any direct or indirect interest in the income, gains or profits of any investment made by the board, and such person may not receive any pay or emolument for his services in connection with any investment made by the board. No trustee or employee of the board may become an endorser or surety or in any manner an obligor for money loaned by or borrowed from the system.

(4) Under the authority granted in Section 43-28-9, the board may establish criteria for investment managers, mutual funds or other such entities to act as contractors or consultants to the board. The board may contract, either directly or through such contractors or consultants, to provide such services as may be a part of the comprehensive investment plan or as may be deemed necessary or proper by the board, including, but not limited to, providing consolidated billing, individual and collective record keeping and accounting, and asset purchase, control and safekeeping.

(5) No account owner, contributor or payor may directly or indirectly direct the investment of any account except as may be permitted under Section 529A of the Internal Revenue Code of 1986, as amended.

**HISTORY: Laws, 2017, ch. 350, § 8, eff from and after passage (approved Mar. 20, 2017).**

**Federal Aspects—** Section 539A of the Internal Revenue Code of 1986, see 26 USCS § 529A.

## § 43-28-17. Administration of Mississippi ABLE Program; provisions of program account participation agreement; termination of program.

(1) On or before July 1, 2018, the Mississippi ABLE Board shall establish and administer the Mississippi ABLE Program or shall enter into a contractual relationship or into a consortium with another state or states to provide qualifying Mississippi residents access to enrollment in an operating ABLE Program. Before implementing the program, the board shall obtain a written opinion from counsel specializing in:

(a) Federal tax matters which indicate that the Mississippi ABLE Program is designed to comply with Section 529A of the Internal Revenue Code; and

(b) Federal securities law which indicate that the Mississippi ABLE Program and the offering of participation in the program are designed to comply with applicable federal securities law and qualify for the available tax exemptions under such law.

(2) The Mississippi ABLE account participation agreement must include provisions specifying that:

(a) The participation agreement is only an obligation of the Mississippi ABLE Program and the ABLE Trust Fund and is not an obligation of the state;

(b) Participation in the Mississippi ABLE Program does not guarantee that sufficient funds will be available to cover all qualified disability expenses for any designated beneficiary and does not guarantee the receipt or continuation of any product or service for the designated beneficiary;

(c) The designated beneficiary must be a resident of this state or a resident of a contracting or consortium state at the time the ABLE account is established;

(d) The establishment of an ABLE account in violation of federal law is prohibited;

(e) Contributions in excess of the limitations set forth in Section 529A of the Internal Revenue Code are prohibited;

(f) The state is a creditor of ABLE accounts as, and to the extent, set forth in Section 529A of the Internal Revenue Code; and

(g) Material misrepresentations by a party to the participation agreement, other than the board in the application for the participation agreement or in any communication with the board regarding the Mississippi ABLE Program may result in the involuntary liquidation of the ABLE account. If an account is involuntarily liquidated, the designated beneficiary is entitled to a refund, subject to any fees or penalties provided by the participation agreement and the Internal Revenue Code.

(3) The participation agreement may include provisions specifying:

(a) The requirements and applicable restrictions for opening an ABLE account;

(b) The eligibility requirements for a party to a participation agreement and the rights of the party;

(c) The requirements and applicable restrictions for making contributions to an ABLE account;

(d) The requirements and applicable restrictions for directing the investment of the contributions or balance of the ABLE account;

(e) The administrative fee and other fees and penalties applicable to an ABLE account;

(f) The terms and conditions under which an ABLE account or participation agreement may be modified, transferred or terminated;

(g) The disposition of abandoned ABLE accounts; and

(h) Any other terms and conditions determined to be necessary or proper to conform the participation agreement with the requirements of Section 529A of the Internal Revenue Code.

(4) The participation agreement may be amended throughout its term for purposes that include, but are not limited to, allowing a participant to increase or decrease the level of participation and to change designated beneficiaries and other matters authorized by this section and Section 529A of the Internal Revenue Code.

(5) Notwithstanding any other provision of law, the Mississippi ABLE Board, acting through the ABLE Coordinator, may enter into an agreement with contracting states which either allow Mississippi residents to participate under the design, operation, and rules of a contracting state's qualified ABLE Program or which allows residents of a participating contracting state to participate under the Mississippi ABLE Program.

(6) The Mississippi ABLE Program shall continue in existence until terminated by law. If the Mississippi ABLE Board determines that the program is financially infeasible, the board shall submit its recommendation, in the form of a feasibility report, to the Legislature to terminate the program.

**HISTORY: Laws, 2017, ch. 350, § 9, eff from and after passage (approved Mar. 20, 2017).**

**Federal Aspects—** Section 539A of the Internal Revenue Code of 1986, see 26 USCS § 529A.

## § 43-28-19. Annual statements and reports.

(1) The board shall furnish, without charge, to each account owner an annual statement of the following:

(a) The amount contributed by the account owner under the participation agreement;

(b) The annual earnings and accumulated earnings on the ABLE account; and

(c) Any other terms and conditions that the board deems by rule is necessary or appropriate, including those necessary to conform the savings trust account with the requirements of Section 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law or regulations.

(2) The board shall furnish an additional statement complying with subsection (1) to an account owner or beneficiary on written request. The board may charge a reasonable fee for each statement furnished under this subsection.

(3)(a) On or before November 1, 2018, the board shall prepare a report on the status of the establishment of the Mississippi ABLE Program. The report must also include, if warranted, recommendations for statutory changes to enhance the effectiveness and efficiency of the program. The board shall submit copies of the report to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the State Treasurer and to the Executive Director of the Department of Rehabilitation Services.

(b) The board, in its discretion as to frequency, shall cause to be prepared annual reports setting forth in appropriate detail an accounting of the funds and a description of the financial condition of the program, which shall be submitted no later than ninety (90) days after the end of each fiscal year. Such report shall be submitted to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the State Treasurer and to the Executive Director of the Department of Rehabilitation Services. The accounts of the fund shall be subject to annual audits by the State Auditor or his designee.

**HISTORY: Laws, 2017, ch. 350, § 10, eff from and after passage (approved Mar. 20, 2017).**

**Federal Aspects—** Section 539 of the Internal Revenue Code of 1986, see 26 USCS § 529.

## § 43-28-21. Mississippi ABLE Program monies paid into or expended out of the trust fund on behalf of a beneficiary are exempt from creditor claims; prohibition against use as loan collateral.

Monies paid into or expended out of the ABLE Trust Fund by or on behalf of a designated beneficiary are exempt from all claims of creditors of the designated beneficiary if the participation agreement has not been terminated. Monies paid into the Mississippi ABLE Program and benefits accrued through the program may not be pledged for the purpose of securing a loan.

**HISTORY: Laws, 2017, ch. 350, § 11, eff from and after passage (approved Mar. 20, 2017).**

## § 43-28-23. Distribution requirements.

(1) Upon the death of the designated beneficiary, the appropriate health care administration agency and the Division of Medicaid of another state in which the beneficiary received services may file a claim with the Mississippi ABLE Program for the total amount of medical assistance provided for the designated beneficiary under the Medicaid program since the inception of the Mississippi ABLE account, less any premiums paid by or on behalf of the designated beneficiary to a Medicaid buy-in program. Funds in the ABLE account of the deceased designated beneficiary must first be distributed for qualified disability expenses followed by distributions for the Medicaid claim authorized under this paragraph. Any remaining amount shall be distributed as provided in the participation agreement required under Section 43-28-19.

(2) The Mississippi ABLE Coordinator shall assist and cooperate with the appropriate health care administration agency and the Division of Medicaid in other states which have provided services to a Mississippi ABLE account beneficiary, by providing the agency and divisions with the information needed to accomplish the purpose and objective of this section.

**HISTORY: Laws, 2017, ch. 350, § 12, eff from and after passage (approved Mar. 20, 2017).**

## § 43-28-25. Certain state agencies required to assist board.

The Mississippi Department of Health, the Department of Rehabilitation Services, the Division of Medicaid, the Department of Child Protection Services and the State Department of Education shall assist, cooperate and coordinate with the Mississippi ABLE Board in the provision of public information and outreach for the Mississippi ABLE Program.

**HISTORY: Laws, 2017, ch. 350, § 13, eff from and after passage (approved Mar. 20, 2017).**

## § 43-28-27. Severability.

The provisions of this chapter are severable. If any part of this chapter is declared invalid or unconstitutional, such declaration shall not affect the parts of this chapter which remain.

**HISTORY: Laws, 2017, ch. 350, § 14, eff from and after passage (approved Mar. 20, 2017).**

# CHAPTER 33.

# HOUSING AND HOUSING AUTHORITIES

Article 1. Housing Authorities. .......... 43-33-1
Article 11. Mississippi Home Corporation Act. .......... 43-33-701

## ARTICLE 1.

## HOUSING AUTHORITIES.

Housing Task Force. .......... 43-33-75

## IN GENERAL

## § 43-33-3. Finding and declaration of necessity.

### JUDICIAL DECISIONS

**1. Non-discretionary functions.**

Because the act of maintaining or repairing the apartments – or failing to maintain or repair – fell under the housing authority's duty to provide its residents a safe dwelling, it could not be said the decision to not repair or replace a light fixture was the exercise of a discretionary function; however, the housing authority was entitled to sovereign immunity because it had no actual or constructive notice of the dangerous condition of the light fixture before it fell on the tenant. Serrano v. Laurel Hous. Auth., 151 So. 3d 256, 2014 Miss. App. LEXIS 661 (Miss. Ct. App. 2014).

## HOUSING TASK FORCE

Sec.
43-33-75. Repealed.

### § 43-33-75. Repealed.

Repealed by Laws of 2017, ch. 402, § 8, effective July 1, 2017.

§ 43-33-75. [Laws, 1988, ch. 318, eff from and after passage (approved April 13, 1988).]

**Editor's Notes** — Former § 43-33-75 established the Housing Task Force.

## ARTICLE 11.

## MISSISSIPPI HOME CORPORATION ACT.

Sec.
43-33-729. Issuance of negotiable bonds and notes; purpose.

### § 43-33-729. Issuance of negotiable bonds and notes; purpose.

**[Through June 30, 2021, this section shall read as follows:]**

(1) The corporation may from time to time issue its negotiable bonds and notes in such principal amounts as, in the opinion of the corporation, shall be necessary to provide sufficient funds for achieving the corporate purposes thereof, including operating expenses and reserves, the payment of interest on bonds and notes of the corporation, establishment of reserves to secure such bonds and notes, and all other expenditures of the corporation incident to and necessary or convenient to carry out its corporate purposes and powers. Provided, except as otherwise authorized herein, bonds and notes may be issued annually under this article in an aggregate principal amount not to exceed Three Hundred Fifty Million Dollars ($350,000,000.00), excluding bonds and notes issued to refund outstanding bonds and notes, bonds and notes in which the corporation acts as a conduit issuer and bonds and notes issued for purposes related to Hurricane Katrina. Such annual period shall be the same as the fiscal year of the state, commencing with the annual period of July 1, 2009, to June 30, 2010.

(2) The provisions of Sections 75-71-1 through 75-71-57, Mississippi Code of 1972 (the "Mississippi Securities Act"), shall not apply to bonds and notes issued under the authority of this article, and no application for a formal exemption from the provisions of such act shall be required with respect to such bonds and notes.

(3) Except as may otherwise be expressly provided by the corporation, all bonds and notes issued by the corporation shall be general obligations of the corporation, secured by the full faith and credit of the corporation and payable out of any monies, assets or revenues of the corporation, subject only to any

agreement with the bondholders or noteholders pledging any particular monies, assets or revenues.

The corporation may issue bonds or notes to which the principal and interest are payable:

(a) Exclusively from the revenues of the corporation resulting from the use of the proceeds of such bonds or notes; or

(b) Exclusively from any particular revenues of the corporation, whether or not resulting from the use of the proceeds of such bonds or notes.

(4) Any bonds or notes issued by the corporation may be additionally secured:

(a) By private insurance, by a direct pay or standby letter of credit, or by any other credit enhancement facility procured by the corporation for the payment of any such bonds;

(b) By a pledge of any grant, subsidy or contribution from the United States or any agency or instrumentality thereof, or from the state or any agency, instrumentality or political subdivision thereof, or from any person, firm or corporation; or

(c) By the pledge of any securities, funds or reserves (or earnings thereon) available to the corporation.

(5) Bonds and notes issued by the corporation shall be authorized by a resolution or resolutions of the corporation adopted as provided for by this article; provided, that any such resolution authorizing the issuance of bonds or notes may delegate to an officer or officers of the corporation the power to issue such bonds or notes from time to time and to fix the details of any such issues of bonds or notes by an appropriate certification of such authorized officer.

(6) Except as specifically provided in this article, no notice, consent or approval by any governmental body or public officer shall be required as a prerequisite to the issuance, sale or delivery of any bonds or notes of the corporation pursuant to the provisions of this article. However, all bonds or notes issued pursuant to this article may be validated, except as otherwise provided in this section, in accordance with the provisions of Sections 31-13-1 through 31-13-11, Mississippi Code of 1972, in the same manner as provided therein for bonds issued by a municipality. Any such validation proceedings shall be held in the First Judicial District of Hinds County, Mississippi. Notice thereof shall be given by publication in any newspaper published in the City of Jackson, Mississippi, and of general circulation throughout the state.

(7) It is hereby determined that the corporation is the sole entity in the state authorized to issue bonds or notes for the purposes of financing low and moderate income rental or residential housing as set forth in this article. In addition, the corporation shall have the power to issue mortgage credit certificates, as provided by Section 25 of the Internal Revenue Code of 1954, as amended, and to comply with all of the terms and conditions set forth in Section 25, as the same may be amended from time to time.

**[From and after July 1, 2021, this section shall read as follows:]**

(1) The corporation may from time to time issue its negotiable bonds and notes in such principal amounts as, in the opinion of the corporation, shall be

necessary to provide sufficient funds for achieving the corporate purposes thereof, including operating expenses and reserves, the payment of interest on bonds and notes of the corporation, establishment of reserves to secure such bonds and notes, and all other expenditures of the corporation incident to and necessary or convenient to carry out its corporate purposes and powers. Provided, except as otherwise authorized herein, bonds and notes shall not be issued under this article in an aggregate principal amount exceeding the aggregate principal amount of bonds and notes outstanding on July 1, 2021, excluding bonds and notes issued to refund outstanding bonds and notes, bonds and notes in which the corporation acts as a conduit issuer and bonds and notes issued for purposes related to Hurricane Katrina.

(2) The provisions of Sections 75-71-1 through 75-71-57, Mississippi Code of 1972 (the "Mississippi Securities Act"), shall not apply to bonds and notes issued under the authority of this article, and no application for a formal exemption from the provisions of such act shall be required with respect to such bonds and notes.

(3) Except as may otherwise be expressly provided by the corporation, all bonds and notes issued by the corporation shall be general obligations of the corporation, secured by the full faith and credit of the corporation and payable out of any monies, assets or revenues of the corporation, subject only to any agreement with the bondholders or noteholders pledging any particular monies, assets or revenues.

The corporation may issue bonds or notes to which the principal and interest are payable:

(a) Exclusively from the revenues of the corporation resulting from the use of the proceeds of such bonds or notes; or

(b) Exclusively from any particular revenues of the corporation, whether or not resulting from the use of the proceeds of such bonds or notes.

(4) Any bonds or notes issued by the corporation may be additionally secured:

(a) By private insurance, by a direct pay or standby letter of credit, or by any other credit enhancement facility procured by the corporation for the payment of any such bonds;

(b) By a pledge of any grant, subsidy or contribution from the United States or any agency or instrumentality thereof, or from the state or any agency, instrumentality or political subdivision thereof, or from any person, firm or corporation; or

(c) By the pledge of any securities, funds or reserves (or earnings thereon) available to the corporation.

(5) Bonds and notes issued by the corporation shall be authorized by a resolution or resolutions of the corporation adopted as provided for by this article; provided, that any such resolution authorizing the issuance of bonds or notes may delegate to an officer or officers of the corporation the power to issue such bonds or notes from time to time and to fix the details of any such issues of bonds or notes by an appropriate certification of such authorized officer.

(6) Except as specifically provided in this article, no notice, consent or approval by any governmental body or public officer shall be required as a prerequisite to the issuance, sale or delivery of any bonds or notes of the corporation pursuant to the provisions of this article. However, all bonds or notes issued pursuant to this article may be validated, except as otherwise provided in this section, in accordance with the provisions of Sections 31-13-1 through 31-13-11, Mississippi Code of 1972, in the same manner as provided therein for bonds issued by a municipality. Any such validation proceedings shall be held in the First Judicial District of Hinds County, Mississippi. Notice thereof shall be given by publication in any newspaper published in the City of Jackson, Mississippi, and of general circulation throughout the state.

(7) It is hereby determined that the corporation is the sole entity in the state authorized to issue bonds or notes for the purposes of financing low and moderate income rental or residential housing as set forth in this article. In addition, the corporation shall have the power to issue mortgage credit certificates, as provided by Section 25 of the Internal Revenue Code of 1954, as amended, and to comply with all of the terms and conditions set forth in Section 25, as the same may be amended from time to time.

**HISTORY: Laws, 1989, ch. 525, § 16; Laws, 1993, ch. 567, § 1; Laws, 1995, ch. 529, § 1; Laws, 2000, ch. 627, § 2; Laws, 2003, ch. 456, § 1; Laws, 2006, ch. 500, § 1; Laws, 2009, ch. 486, § 1; Laws, 2014, ch. 338, § 1, eff from and after passage (approved Mar. 13, 2014); Laws, 2019, ch. 400, § 1, eff from and after June 30, 2019; Laws, 2019, ch. 430, § 1, eff from and after March 29, 2019.**

**Joint Legislative Committee Note —** Section 1 of Chapter 400, Laws of 2019, effective June 30, 2019 (approved March 22, 2019), amended this section. Section 1 of Chapter 430, Laws of 2019, effective from and after passage (approved March 29, 2019), also amended this section. As set out above, this section reflects the language of Section 1 of Chapter 400, Laws of 2019, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

**Amendment Notes —** The first 2019 amendment (ch. 400), effective June 30, 2019, in the first version, substituted “Through June 30, 2021” for “Through June 30, 2019” in the bracketed effective date language; and in the second version, substituted “From and after July 1, 2021“ for “From and after July 1, 2019” in the bracketed effective date language, and substituted “July 1, 2021” for “July 1, 2019” in the last sentence of (1).

The second 2019 amendment (ch. 430), effective March 29, 2019, in the first version of the section, substituted “Through June 30, 2024” for “Through June 30, 2019” in the bracketed effective date language preceding the section; in the second version of the section, substituted “From and after July 1, 2024” for “From and after July 1, 2019” in the bracketed effective date language preceding the section, and substituted “July 1, 2024” for “July 1, 2019” in the last sentence of (1).

# CHAPTER 35.

# URBAN RENEWAL AND REDEVELOPMENT

## ARTICLE 1.

## URBAN RENEWAL.

### § 43-35-25. Property exempt from taxes and from levy and sale by virtue of an execution.

#### JUDICIAL DECISIONS

**1. Lien removal**

Statute forbids the resulting judgment's being executed on municipal property held for purposes of the Urban Renewal Law; the chancellor's removal of the lien in this case was proper. Watkins Dev., LLC v. Jackson Redevelopment Auth., 283 So. 3d 170, 2019 Miss. LEXIS 356 (Miss. 2019).

### § 43-35-33. Urban renewal agency.

#### JUDICIAL DECISIONS

**1. In general.**

Even if the mayor could direct the executive director of the Joint Redevelopment Authority (JRA), it was the JRA commissioners, not its executive director, who made the actual decisions regarding which projects to support; the mayor's statutory authority to influence the JRA was constrained, and because the city council had policymaking authority over funding, the city was not liable for the mayor's actions. Advanced Tech. Bldg. Solutions, L.L.C. v. City of Jackson, 817 F.3d 163, 2016 U.S. App. LEXIS 4750 (5th Cir. Miss.), cert. denied, — U.S. —, 137 S. Ct. 297, 196 L. Ed. 2d 216, 2016 U.S. LEXIS 6071 (U.S. 2016).

# CHAPTER 37.

# ACQUISITION OF REAL PROPERTY USING PUBLIC FUNDS

Sec.
43-37-3. Acquisition of real property in publicly funded projects.

### § 43-37-3. Acquisition of real property in publicly funded projects.

(1) Any person, agency or other entity acquiring real property for any project or program in which public funds are used shall comply with the following policies:

(a) Every reasonable effort shall be made to acquire expeditiously real property by negotiation.

(b) Real property shall be appraised before the initiation of negotiations, except that the acquiring person, agency or other entity may adopt a procedure in compliance with federal regulations to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value. For the purposes of this chapter, property with a low fair market value is property with a fair market value of Ten Thousand Dollars ($10,000.00) or less. The owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(c)(i) Except as otherwise provided in subparagraph (ii) of this paragraph, the price that shall be paid for real property shall be the lesser of the best negotiated price or the approved appraisal of the fair market value or the price at which the property is offered for sale. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which the property is acquired or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The owner of the real property to be acquired shall be provided with a written statement of, and summary of the basis for, the amount established as just compensation. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(ii) The purchase price for real property may exceed the amount offered as just compensation for the property when reasonable efforts to negotiate an agreement at that amount have failed, and the person, agency or other entity seeking to acquire the property approves an administrative settlement as reasonable, prudent and in the best interests of the public. When state funds pay for all or a portion of the acquisition, the purchasing person, agency or other entity shall prepare a written statement explaining the reasons that justified the purchase price exceeding the amount offered as just compensation, including any anticipated trial risks, and any available information supporting an administrative settlement.

(d) No owner shall be required to surrender possession of real property before the agreed purchase price is paid or there is deposited with the state court, in accordance with applicable law, for the benefit of the owner an amount not less than the approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding of such property.

(e) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available) or to move his business or farm operation without at least ninety (90) days' written notice from the date by which such move is required.

(f) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the acquiring authority on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(g) In no event shall the time of condemnation be advanced, or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other coercive action be taken to compel an agreement on the price to be paid for the property.

(h) If an interest in real property is to be acquired by exercise of power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring authority shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(i) If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire that remnant shall be made. For the purposes of this chapter, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the person, agency or other entity acquiring the property determines has little or no value or utility to the owner.

(j) A person whose real property is being acquired in accordance with this chapter may, after the person has been fully informed of his right to receive just compensation for such property, donate such property, any part thereof, any interest therein or any compensation paid therefor to the person, agency or other entity acquiring the property in such manner as he so determines.

(2) Any real property acquired by any person, agency or other entity using public funds in accordance with Section 57-75-37(3) or Section 57-75-37(4) shall be exempt from the provisions of subsection (1)(b) and (c) of this section to the extent permitted by Section 57-75-37(3) or Section 57-75-37(4).

**HISTORY: Codes, 1942, § 2749-55; Laws, 1972, ch. 525, § 5; Laws, 1989, ch. 457, § 1; Laws, 1991, ch. 418 § 1; Laws, 1996, ch. 426, § 2; Laws, 2008, ch. 339, § 1; Laws, 2009, ch. 531, § 1; Laws, 2013, 1st Ex Sess, ch. 1, § 12; Laws, 2016, 1st Ex Sess, ch. 1, § 16, eff from and after passage (approved Feb. 8, 2016).**

**Amendment Notes** — The 2016 1st Extraordinary Session amendment inserted "or Section 57-75-37(4)" both times it appears in (2).

## § 43-37-9. Reimbursement of expenses in cases of inverse condemnation.

### JUDICIAL DECISIONS

**1. Attorneys' fees.**

Trial court properly declined to award a property owner the total amount of attorneys' fees, costs, and expert appraisal fees actually incurred in its inverse condemnation claim because, while the trial court failed to award any reimbursement at all, it made specific findings of fact on each of the required factors, and the trial judge's decision to place greater weight on results-obtained factor could not be said to be an unmistakable or indisputable error.

Bay Point Props. v. Miss. Transp. Comm'n, — So. 3d —, 2020 Miss. LEXIS 408 (Miss. Oct. 29, 2020).

State of Mississippi was properly held liable for attorney's fees and costs in an inverse condemnation action because Miss. Code Ann. § 43-37-9 allowed such an award in any case in which private property was used in any program or project in which federal and/or federal-aid funds were used. State v. Murphy, 202 So. 3d 1243, 2016 Miss. LEXIS 446 (Miss. 2016).

In an inverse condemnation proceeding in which a landowner was awarded a $500 verdict, it was error to deny the landowner attorneys' fees because the verdict satisfied the statutory prerequisites for such a mandatory award. Bay Point Props. v. Miss. Transp. Comm'n, 201 So. 3d 1046, 2016 Miss. LEXIS 282 (Miss. 2016), cert. denied, — U.S. —, 137 S. Ct. 2002, 198 L. Ed. 2d 750, 2017 U.S. LEXIS 4057 (U.S. 2017).

# CHAPTER 47.

# MISSISSIPPI VULNERABLE PERSONS ACT

Sec.

| | |
|---|---|
| 43-47-7. | Reporting abuse, neglect, or exploitation; establishment of central register; confidentiality. |
| 43-47-19. | Prohibition against abuse, neglect, or exploitation; penalties; relation to other laws. |
| 43-47-29. | Appointment of conservator pursuant to Section 93-20-401 or 93-20-402. |
| 43-47-37. | Reporting of abuse and exploitation of patients and residents of care facilities. |
| 43-47-39. | Vulnerable Persons Training, Investigation and Prosecution Fund created; purpose; funding; funding of expenses of Vulnerable Persons Unit; deposit of user charges and fees authorized under this section into State General Fund. |

## § 43-47-5. Definitions.

### JUDICIAL DECISIONS

### ANALYSIS

0.5. Constitutionality.
3. Sufficiency of evidence.
4. Summary judgment.

**0.5. Constitutionality.**

Mississippi Vulnerable Persons Act, was not unconstitutionally vague, because, while the Legislature defined "vulnerable person" broadly, it defined the criminal offense with sufficient definiteness that ordinary people could understand what conduct was prohibited and in a manner that did not encourage arbitrary and discriminatory enforcement. Colburn v. State, 201 So. 3d 462, 2016 Miss. LEXIS 323 (Miss. 2016), cert. denied, — U.S. —, 137 S. Ct. 1214, 197 L. Ed. 2d 248, 2017 U.S. LEXIS 1470 (U.S. 2017).

**3. Sufficiency of evidence.**

Evidence was sufficient to convict defendant of felony exploitation of a vulnerable adult because the 79-year-old victim suffered short-term memory loss due to aging that impaired her ability to protect herself from defendant's exploitation; more than $12,000 worth of checks were written to defendant for unfinished or unperformed work on the victim's yard; and the victim had often written defendant multiple checks, sometimes in the span of a day or two, in the same amount for apparently the same work. Small v. State, — So. 3d —, 2020 Miss. LEXIS 371 (Miss. Oct. 8, 2020).

Evidence that defendant used his close relationship with the victim and other forms of persuasion to gain the victim's consent to financial transactions was sufficient to support defendant's conviction for exploitation of a vulnerable person. Colburn v. State, 201 So. 3d 462, 2016 Miss. LEXIS 323 (Miss. 2016), cert. denied, — U.S. —, 137 S. Ct. 1214, 197 L. Ed. 2d 248, 2017 U.S. LEXIS 1470 (U.S. 2017).

**4. Summary judgment.**

Chancery court properly granted a mother summary judgment in her conversion action against her son's fiancée because she produced a fully supported summary judgment motion that included a doctor's affidavit stating that the son was in the impaired range and that he did not have the cognitive ability, reasoning, or mental capacity to realize he was transferring a large sum of money to the fiancée or the consequences of his actions. Anderson v. Wiggins, — So. 3d —, 2019 Miss. App. LEXIS 209 (Miss. Ct. App. May 14, 2019), rev'd, — So. 3d —, 2020 Miss. LEXIS 39 (Miss. 2020).

## § 43-47-7. Reporting abuse, neglect, or exploitation; establishment of central register; confidentiality.

(1)(a) Except as otherwise provided by Section 43-47-37 for vulnerable persons in care facilities and by Section 43-7-65 for the State Ombudsman Program, any person including, but not limited to, the following, who knows or suspects that a vulnerable person has been or is being abused, neglected or exploited shall immediately report such knowledge or suspicion to the Department of Human Services or to the county department of human services where the vulnerable person is located. If the vulnerable person is a minor, then such report may be made to the Department of Child Protection Services:

(i) Attorney, physician, osteopathic physician, medical examiner, chiropractor or nurse engaged in the admission, examination, care or treatment of vulnerable persons;

(ii) Health professional or mental health professional other than one listed in subparagraph (i);

(iii) Practitioner who relies solely on spiritual means for healing;

(iv) Social worker, family protection worker, family protection specialist or other professional care, residential or institutional staff;

(v) State, county or municipal criminal justice employee or law enforcement officer;

(vi) Human rights advocacy committee or long-term care ombudsman council member; or

(vii) Accountant, stockbroker, financial advisor or consultant, insurance agent or consultant, investment advisor or consultant, financial planner, or any officer or employee of a bank, savings and loan, credit union or any other financial service provider.

(b) To the extent possible, a report made pursuant to paragraph (a) must contain, but need not be limited to, the following information:

(i) Name, age, race, sex, physical description and location of each vulnerable person alleged to have been abused, neglected or exploited.

(ii) Names, addresses and telephone numbers of the vulnerable person's family members.

(iii) Name, address and telephone number of each alleged perpetrator.

(iv) Name, address and telephone number of the caregiver of the vulnerable person, if different from the alleged perpetrator.

(v) Description of the neglect, exploitation, physical or psychological injuries sustained.

(vi) Actions taken by the reporter, if any, such as notification of the criminal justice agency.

(vii) Any other information available to the reporting person which may establish the cause of abuse, neglect or exploitation that occurred or is occurring.

In addition to the above, any person or entity holding or required to hold a license as specified in Title 73, Professions and Vocations, Mississippi Code of 1972, shall be required to give his, her or its name, address and telephone number in the report of the alleged abuse, neglect or exploitation.

(c) The department, or its designees, shall report to an appropriate criminal investigative or prosecutive authority any person required by this section to report or who fails to comply with this section. A person who fails to make a report as required under this subsection or who, because of the circumstances, should have known or suspected beyond a reasonable doubt that a vulnerable person suffers from exploitation, abuse, neglect or self-neglect but who knowingly fails to comply with this section shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine not exceeding Five Thousand Dollars ($5,000.00), or by imprisonment in the county jail for not more than six (6) months, or both such fine and imprisonment. However, for purposes of this subsection (1), any recognized legal financial transaction shall not be considered cause to report the knowledge or suspicion of the financial exploitation of a vulnerable person. If a person convicted under this section is a member of a profession or occupation that is licensed, certified or regulated by the state, the court shall notify the appropriate licensing, certifying or regulating entity of the conviction.

(2) Reports received by law enforcement authorities or other agencies shall be forwarded immediately to the Department of Human Services or the county department of human services. The Department of Human Services shall investigate the reported abuse, neglect or exploitation immediately and shall file a preliminary report of its findings with the Office of the Attorney General within forty-eight (48) hours if immediate attention is needed, or seventy-two (72) hours if the vulnerable person is not in immediate danger and shall make additional reports as new information or evidence becomes available. The Department of Human Services, upon request, shall forward a statement to the person making the initial report required by this section as to what action is being taken, if any.

(3) The report may be made orally or in writing, but where made orally, it shall be followed up by a written report. A person who fails to report or to otherwise comply with this section, as provided herein, shall have no civil or criminal liability, other than that expressly provided for in this section, to any person or entity in connection with any failure to report or to otherwise comply with the requirements of this section.

(4) Anyone who makes a report required by this section or who testifies or participates in any judicial proceedings arising from the report or who participates in a required investigation or evaluation shall be presumed to be acting in good faith and in so doing shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed. However, the immunity provided under this subsection shall not apply to any suspect or perpetrator of any abuse, neglect or exploitation.

(5) A person who intentionally makes a false report under the provisions of this section may be found liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury.

(6) The Executive Director of the Department of Human Services shall establish a statewide central register of reports made pursuant to this section. The central register shall be capable of receiving reports of vulnerable persons in need of protective services seven (7) days a week, twenty-four (24) hours a day. To effectuate this purpose, the executive director shall establish a single toll-free statewide phone number that all persons may use to report vulnerable persons in need of protective services, and that all persons authorized by subsection (7) of this section may use for determining the existence of prior reports in order to evaluate the condition or circumstances of the vulnerable person before them. Such oral reports and evidence of previous reports shall be transmitted to the appropriate county department of human services. The central register shall include, but not be limited to, the following information: the name and identifying information of the individual reported, the county department of human services responsible for the investigation of each such report, the names, affiliations and purposes of any person requesting or receiving information which the executive director believes might be helpful in the furtherance of the purposes of this chapter, the name, address, birth date, social security number of the perpetrator of abuse, neglect and/or exploitation, and the type of abuse, neglect and/or exploitation of which there was substantial evidence upon investigation of the report. The central register shall inform the person making reports required under this section of his or her right to request statements from the department as to what action is being taken, if any.

Each person, business, organization or other entity, whether public or private, operated for profit, operated for nonprofit or a voluntary unit of government not responsible for law enforcement providing care, supervision or treatment of vulnerable persons shall conduct criminal history records checks on each new employee of the entity who provides, and/or would provide direct patient care or services to adults or vulnerable persons, as provided in Section 43-11-13.

The department shall not release data that would be harmful or detrimental to the vulnerable person or that would identify or locate a person who, in good faith, made a report or cooperated in a subsequent investigation unless ordered to do so by a court of competent jurisdiction.

(7) Reports made pursuant to this section, reports written or photographs taken concerning such reports in the possession of the Department of Human

Services or the county department of human services shall be confidential and shall only be made available to:

(a) A physician who has before him a vulnerable person whom he reasonably suspects may be abused, neglected or exploited, as defined in Section 43-47-5;

(b) A duly authorized agency having the responsibility for the care or supervision of a subject of the report;

(c) A grand jury or a court of competent jurisdiction, upon finding that the information in the record is necessary for the determination of charges before the grand jury;

(d) A district attorney or other law enforcement official.

Notwithstanding the provisions of paragraph (b) of this subsection, the department may not disclose a report of the abandonment, exploitation, abuse, neglect or self-neglect of a vulnerable person to the vulnerable person's guardian, attorney-in-fact, surrogate decision maker, or caregiver who is a perpetrator or alleged perpetrator of the abandonment, exploitation, abuse or neglect of the vulnerable person.

Any person given access to the names or other information identifying the subject of the report, except the subject of the report, shall not divulge or make public such identifying information unless he is a district attorney or other law enforcement official and the purpose is to initiate court action. Any person who willfully permits the release of any data or information obtained pursuant to this section to persons or agencies not permitted to such access by this section shall be guilty of a misdemeanor.

(8) Upon reasonable cause to believe that a caretaker or other person has abused, neglected or exploited a vulnerable person, the department shall promptly notify the district attorney of the county in which the vulnerable person is located and the Office of the Attorney General, except as provided in Section 43-47-37(2).

**HISTORY: Laws, 1986, ch. 468, § 4; reenacted, Laws, 1989, ch. 381, § 4; Laws, 1990, ch. 493, § 3; Laws, 1991, ch. 431 § 2; Laws, 1996, ch. 351, § 2; Laws, 2001, ch. 603, § 2; Laws, 2004, ch. 489, § 7; Laws, 2006, ch. 600, § 9; Laws, 2009, ch. 468, § 1; Laws, 2010, ch. 357, § 4; Laws, 2017, ch. 344, § 13, eff from and after July 1, 2017; Laws, 2019, ch. 420, § 13, eff from and after July 1, 2019.**

**Amendment Notes** — The 2017 amendment inserted "and by Section 43-7-65 for the State Ombudsman Program" in (1)(a).

The 2019 amendment added the last sentence of the introductory paragraph of (1)(a) and made a related change.

**Cross References** — Person failing to comply with § 75-71-413(a) subject to subsection (1)(c) of this section, see § 75-71-413.

## § 43-47-19. Prohibition against abuse, neglect, or exploitation; penalties; relation to other laws.

(1) It shall be unlawful for any person to abuse, neglect or exploit any vulnerable person.

(2)(a) Any person who willfully commits an act or willfully omits the performance of any duty, which act or omission contributes to, tends to contribute to, or results in neglect, physical pain, injury, mental anguish, unreasonable confinement or deprivation of services which are necessary to maintain the mental or physical health of a vulnerable person, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed One Thousand Dollars ($1,000.00) or by imprisonment not to exceed one (1) year in the county jail, or by both such fine and imprisonment. Any accepted medical procedure performed in the usual scope of practice shall not be a violation of this subsection.

(b) Any person who willfully exploits a vulnerable person, where the value of the exploitation is less than Two Hundred Fifty Dollars ($250.00), shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed Five Thousand Dollars ($5,000.00) or by imprisonment not to exceed one (1) year in the county jail, or by both such fine and imprisonment; where the value of the exploitation is Two Hundred Fifty Dollars ($250.00) or more, the person who exploits a vulnerable person shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in the custody of the Department of Corrections for not more than ten (10) years.

(3) Any person who willfully inflicts physical pain or injury upon a vulnerable person shall be guilty of felonious abuse or battery, or both, of a vulnerable person and, upon conviction thereof, may be punished by imprisonment in the State Penitentiary for not more than twenty (20) years.

(4) Any person who willfully inflicts severe mental anguish upon a vulnerable person shall be guilty of a felony and shall be sentenced to not less than one (1) year nor more than five (5) years in the custody of the Department of Corrections and shall be fined not less than Two Thousand Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00).

(5) For any third or subsequent misdemeanor conviction of any person violating any part of this section, the offenses being committed within a period of five (5) years, such person shall be guilty of a felony and shall be sentenced to not less than one (1) year nor more than five (5) years in the custody of the Department of Corrections and shall be fined not less than Two Thousand Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00).

(6) Nothing contained in this section shall prevent proceedings against a person under any statute of this state or municipal ordinance defining any act as a crime or misdemeanor.

**HISTORY: Laws, 1986, ch. 468, § 10; reenacted, Laws, 1989, ch. 381, § 10; Laws, 1990, ch. 493, § 6; Laws, 2001, ch. 603, § 4; Laws, 2003, ch. 558, § 2; Laws, 2010, ch. 357, § 11; Laws, 2011, ch. 365, § 1; Laws, 2012, ch. 439, § 2, eff from and after July 1, 2012; Laws, 2019, ch. 368, § 1, eff from and after July 1, 2019.**

**Amendment Notes —** The 2019 amendment added (4) and redesignated former (4) and (5) as (5) and (6).

## JUDICIAL DECISIONS

### ANALYSIS

5. Evidence sufficient
6. Sentencing.

**5. Evidence sufficient**

Evidence was sufficient to convict defendant of felony exploitation of a vulnerable adult because the 79-year-old victim suffered short-term memory loss due to aging that impaired her ability to protect herself from defendant's exploitation; more than $12,000 worth of checks were written to defendant for unfinished or unperformed work on the victim's yard; and the victim had often written defendant multiple checks, sometimes in the span of a day or two, in the same amount for apparently the same work. Small v. State, — So. 3d —, 2020 Miss. LEXIS 371 (Miss. Oct. 8, 2020).

Circuit court properly convicted defendant of abuse of a vulnerable person because, when a mentally disabled resident did not respond to her, she pulled the resident by her hair and dragged her down a hall to the bathroom in order to take a bath. Jackson v. State, 231 So. 3d 257, 2017 Miss. App. LEXIS 678 (Miss. Ct. App. 2017).

**6. Sentencing.**

In a case in which defendant was convicted of felony exploitation of a vulnerable adult, the trial court did not err in sentencing defendant as a habitual offender to the maximum 10 years' imprisonment without parole because the State presented certified copies of two of defendant's out-of-state felony convictions and sentencing records. Small v. State, — So. 3d —, 2020 Miss. LEXIS 371 (Miss. Oct. 8, 2020).

## § 43-47-29. Appointment of conservator pursuant to Section 93-20-401 or 93-20-402.

In addition to the powers granted under the provisions of this chapter, the department is authorized to petition the court under the provisions of Section 93-20-401 or 93-20-402 for appointment of a conservator for any vulnerable person.

**HISTORY: Laws, 1986, ch. 468, § 15; reenacted, Laws, 1989, ch. 381, § 15; Laws, 2010, ch. 357, § 15, eff from and after July 1, 2010;ch. 357, Laws, 2010, ch. 357, § 15, eff from and after July 1, 2010;, eff from and after July 1, 2010; Laws, 2019, ch. 463, Laws, 2019, ch. 463, § 3, eff from and after January 1, 2020.**

**Amendment Notes** — The 2019 amendment effective January 1, 2020, substituted "Section 93-20-401 or 93-20-402" for "Section 93-13-251."

## § 43-47-37. Reporting of abuse and exploitation of patients and residents of care facilities.

(1) Any person who, within the scope of his employment at a care facility as defined in Section 43-47-5(b), or in his professional or personal capacity, has knowledge of or reasonable cause to believe that any patient or resident of a care facility has been the victim of abuse, neglect or exploitation shall report immediately the abuse, neglect or exploitation.

(2) The reporting of conduct as required by subsection (1) of this section shall be made:

(a) By any employee of any home health agency, orally or telephonically, within twenty-four (24) hours of discovery, excluding Saturdays, Sundays and legal holidays, to the department and the Medicaid Fraud Control Unit of the Attorney General's office.

(b) By a home health agency, in writing within seventy-two (72) hours of discovery to the department and the Medicaid Fraud Control Unit. Upon initial review, the Medicaid Fraud Control Unit shall make a determination whether or not the person suspected of committing the reported abuse, neglect or exploitation was an employee of the home health agency. If so, the Medicaid Fraud Control Unit shall determine whether there is substantial potential for criminal prosecution, and upon a positive determination, shall investigate and prosecute the complaint or refer it to an appropriate criminal investigative or prosecutive authority. If the alleged perpetrator is not an employee of the home health agency, the department shall investigate and process the complaint or refer it to an appropriate investigative or prosecutive authority.

(c) By all other care facilities, orally or telephonically, within twenty-four (24) hours of discovery, excluding Saturdays, Sundays and legal holidays, to the State Department of Health and the Medicaid Fraud Control Unit of the Attorney General's office.

(d) By all other care facilities, in writing, within seventy-two (72) hours of the discovery, to the State Department of Health and the Medicaid Fraud Control Unit. If, upon initial review by the State Department of Health and the Medicaid Fraud Control Unit, a determination is made that there is substantial potential for criminal prosecution, the unit will investigate and prosecute the complaint or refer it to an appropriate criminal investigative or prosecutive authority.

(3) The contents of the reports required by subsections (1) and (2) of this section shall contain the following information unless the information is unobtainable by the person reporting:

(a) The name, address, telephone number, occupation and employer's address and telephone number of the person reporting;

(b) The name and address of the patient or resident who is believed to be the victim of abuse or exploitation;

(c) The details, observations and beliefs concerning the incident;

(d) Any statements relating to the incident made by the patient or resident;

(e) The date, time and place of the incident;

(f) The name of any individual(s) believed to have knowledge of the incident;

(g) The name of the individual(s) believed to be responsible for the incident and their connection to the patient or resident; and

(h) Such other information that may be required by the State Department of Health and/or the Medicaid Fraud Control Unit, as requested.

(4) Except as otherwise provided by Section 43-7-65 for the State Ombudsman Program, any other individual who has knowledge of or reasonable cause to believe that any patient or resident of a care facility has been the

victim of abuse, exploitation or any other criminal offense may make a report to the State Department of Health and the Medicaid Fraud Control Unit.

(5)(a) Any individual who, in good faith, makes a report as provided in this section or who testifies in an official proceeding regarding matters arising out of this section shall be immune from all criminal and civil liability. The immunity granted under this subsection shall not apply to any suspect or perpetrator of abuse, neglect or exploitation of any vulnerable person, or of any other criminal act under any statute of this state or municipal ordinance defining any act as a crime or misdemeanor.

(b) No person shall terminate from employment, demote, reject for promotion or otherwise sanction, punish or retaliate against any individual who, in good faith, makes a report as provided in this section or who testifies in any official proceeding regarding matters arising out of this section.

(6) Any care facility that complies in good faith with the requirements of this section to report the abuse or exploitation of a patient or resident in the care facility shall not be sanctioned by the State Department of Health for the occurrence of such abuse or exploitation if the care facility demonstrates that it adequately trained its employees and that the abuse or exploitation was caused by factors beyond the control of the care facility.

(7) Every person who knowingly fails to make the report as required by subsections (1), (2) and (3) of this section or attempts to induce another, by threat or otherwise, to fail to make a report as required by subsections (1), (2) and (3) of this section shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of not exceeding Five Hundred Dollars ($500.00), or by imprisonment in the county jail for not more than six (6) months, or both such fine and imprisonment.

(8) Copies of Sections 43-47-7 and 43-47-37 shall be posted prominently in every health care facility.

(9) If, after initial inquiry or investigation, the Medicaid Fraud Control Unit determines that there is reasonable cause to believe that an employee of a home health agency has abused, neglected or exploited a vulnerable person, the unit shall notify the Mississippi State Department of Health of the alleged abuse, neglect or exploitation.

(10) Upon a judicial determination of evidence that an employee of a care facility has abused, neglected or exploited a vulnerable person, the appropriate investigative agency shall immediately provide the following information to the central registry: name, address, birth date, social security number of the perpetrator; type of abuse, neglect and/or exploitation; name, address, birth date, social security number of the victim; and date of the incident and report.

**HISTORY: Laws, 1990, ch. 493, § 2; Laws, 1991, ch. 431 § 4; Laws, 1996, ch. 351, § 1; Laws, 2001, ch. 603, § 10; Laws, 2010, ch. 357, § 19; Laws, 2017, ch. 344, § 14, eff from and after July 1, 2017.**

**Amendment Notes** — The 2017 amendment added the exception at the beginning of (5); and made minor stylistic changes in (3)(d) and (10).

### § 43-47-39. Vulnerable Persons Training, Investigation and Prosecution Fund created; purpose; funding; funding of expenses of Vulnerable Persons Unit; deposit of user charges and fees authorized under this section into State General Fund.

(1) There is created in the State Treasury a special fund to be known as the Vulnerable Persons Training, Investigation and Prosecution Fund. The purpose of the fund shall be to provide funding for the Vulnerable Persons Unit in the Office of the Attorney General to assist in the training of law enforcement officers, judges, district attorneys, state agencies and investigators at the Department of Human Services with regard to issues arising under the Vulnerable Persons Act, and to provide funding for the Vulnerable Persons Unit in the Office of the Attorney General to assist in the investigation and prosecution of statewide offenders who abuse, neglect or exploit vulnerable persons. The fund shall be a continuing fund, not subject to fiscal-year limitations.

(2) Funding shall be provided by assessments collected from violations set out in Section 99-19-73.

(3) From and after July 1, 2016, the expenses of the Vulnerable Persons Unit shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law and as determined by the State Fiscal Officer.

(4) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY: Laws, 2005, 2nd Ex Sess, ch. 1, § 1; Laws, 2010, ch. 357, § 20; Laws, 1st Ex Sess, 2017, ch. 7, § 22, eff from and after passage (approved June 23, 2017).**

**Amendment Notes —** The 2017 amendment, effective June 23, 2017, deleted "Trust" following "Prosecution" in the first sentence of (1); and added (3) and (4).